Federal Register

9–27–05 Tuesday
Vol. 70 No. 186 Sept. 27, 2005

Pages 56343–56560

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**

Printed on recycled paper.

Contents

Federal Register

Vol. 70, No. 186

Tuesday, September 27, 2005

Agricultural Marketing Service
PROPOSED RULES
Grapes grown in southeastern California and imported table grapes, 56378

Agricultural Research Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56441

Agriculture Department
See Agricultural Marketing Service
See Agricultural Research Service
See Animal and Plant Health Inspection Service
See Forest Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56440–56441

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Nonregulated status determinations—
Monsanto Co.; genetically engineered corn, 56441–56443

Army Department
See Engineers Corps
NOTICES
Environmental statements; record of decision:
U.S. Army Dugway Proving Ground, UT, 56444–56445

Centers for Disease Control and Prevention
NOTICES
Public safety and health protection:
Special Exposure Cohort at Iowa Army Ammunition Plant, IA; employee class designation, 56470–56471
Special Exposure Cohort at Oak Ridge Y-12 Plant, TN; employee class designation, 56470

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56471

Coast Guard
RULES
Drawbridge operations:
Massachusetts, 56373–56374
Regattas and marine parades:
Cambridge Offshore Challenge, 56369–56371
Liberty Grand Prix, 56371–56373
Sunset Lake Hydrofest, 56367–56369
NOTICES
Meetings:
Towing Safety Advisory Committee, 56481–56482

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Army Department
See Engineers Corps

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Sigma Aldrich Co., 56490–56491

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56445–56446

Employment and Training Administration
NOTICES
Adjustment assistance; applications, determinations, etc.:
B&K Acquisition Corporation, Inc., 56491–56492
TRW Automotive, 56492
WestPoint Home, Inc., 56492–56495

Energy Department
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, TN, 56446
Paducah Gaseous Diffusion Plant, KY, 56446–56447

Engineers Corps
NOTICES
Jurisdictional transfers:
Joliet Army Ammunition Plant, IL; portion transfer to Forest Service, 56445
Meetings:
Inland Waterways Users Board, 56445

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Texas, 56374–56376
PROPOSED RULES
Hazardous waste program authorizations:
South Dakota, 56419–56425
Radiation protection programs:
Yucca Mountain, NV; public health and environment radiation protection standards, 56418–56419
NOTICES
Air pollution control:
Acid Rain Program—
Excess emission penalty; annual adjustment factors, 56447
Reports and guidance documents; availability, etc.:
All-Ages Lead Model, 56447–56449
Superfund; response and remedial actions, proposed settlements, etc.:
Old Pillsbury Mill Site, Tilton, NH, 56449
Toxic and hazardous substances control:
Endocrine Disruptor Screening Program; chemical selection approach for initial screening round, 56449–56465
Water pollution control:
Marine sanitation device standard; petitions—
New Hampshire, 56465–56466

Water supply:
Public water supply supervision program—
Tennessee, 56466–56467

Federal Aviation Administration
RULES
Air carrier certification and operations:
Transport category airplanes—
Passenger and flight attendant seats; improved crashworthiness, 56542–56559
Airworthiness directives:
Airbus, 56344–56347
BAE Systems (Operations) Ltd., 56347–56349
Boeing, 56349–56355, 56358–56365
Teledyne Continental Motors, 56355–56357
Airworthiness standards:
Special conditions—
Airbus Model A318 airplanes, 56343–56344
Class D and Class E airspace, 56365
Class E airspace, 56365–56366
Restricted areas, 56366–56367
PROPOSED RULES
Airworthiness directives:
Airbus, 56378–56383, 56389–56391
Boeing, 56383–56389
Area navigation routes, 56391–56394
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 56522–56523

Federal Communications Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56467–56468

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Portland, OR, et al., 56523–56524

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 56468
Permissible nonbanking activities; correction, 56468
Meetings; Sunshine Act, 56468

Federal Trade Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56468–56469

Federal Transit Administration
NOTICES
Environmental statements; notice of intent:
Portland, OR, et al., 56523–56524

Fish and Wildlife Service
RULES
Hunting and fishing:
Refuge-specific regulations
Correction, 56376–56377
Migratory bird hunting:
Federal Indian reservations, off-reservation trust lands, and ceded lands; late season hunting, 56532–56539
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Coachella Valley milk-vetch, 56434–56439
Findings on petitions, etc.—
Gentry indigo bush, 56426–56434

Food and Drug Administration
PROPOSED RULES
Animal drugs, feeds, and related products:
Minor uses or minor species; new drugs designation, 56394–56409
Food for human consumption:
Frozen desserts—
Goat's milk ice cream, mellarine, ice cream and frozen custard, sherbet, water ices, and parmesan and reggiano cheese; food standards, 56409–56417
NOTICES
Meetings:
Harmonization International Conference—
Oncolytic viruses; workshop, 56471–56472
Pharmaceutical Science Advisory Committee, 56472

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Mendocino County, 56443

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56470

Homeland Security Department
See Coast Guard

Indian Affairs Bureau
NOTICES
Environmental statements; notice of intent:
Wind River Indian Reservation, Fremont County, WY, 56482

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See National Park Service
See Reclamation Bureau

Internal Revenue Service
PROPOSED RULES
Income taxes:
Protected benefits; section 411(d)(6) anti-cutback rules; public hearing
Correction, 56418
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56526
Meetings:
Taxpayer Advocacy Panels, 56526

International Trade Administration
NOTICES
Antidumping:
Top-of-the-stove stainless steel cooking ware from—
Korea and Taiwan, 56443–56444

International Trade Commission
NOTICES
Import investigations:
Synthetic indigo from—
China, 56489–56490

Justice Department
See Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Huffy Corp., 56490

Labor Department
See Employment and Training Administration
See Labor Statistics Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56491

Labor Statistics Bureau
NOTICES
Meetings:
Business Research Advisory Council, 56495

National Archives and Records Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 56495–56496

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Carbon monoxide detectors; rulemaking petition denied, 56425–56426

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56473
Inventions, Government-owned; availability for licensing, 56473–56477
Meetings:
National Cancer Institute, 56477–56478
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 56478
National Institute on Aging, 56478–56479
National Institute on Alcohol Abuse and Alcoholism, 56479
National Library of Medicine, 56479
Scientific Review Center, 56479–56481

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Atka mackerel, 56377

National Park Service
NOTICES
Native American human remains, funerary objects; inventory, repatriation, etc.:
Alma College, Alma, MI, 56482–56483
Army Department, Pohakuloa Training Area, HI; correction, 56483
Gila National Forest, Silver City, NM; correction, 56483–56484
Homestead National Monument of America, Beatrice, NE, 56484–56485
New York State Museum, Albany, NY, 56485–56488
University of the Pacific, Stockton, CA, 56488

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 56496

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Nuclear Management Co., LLC, 56496–56497
Safety Light Corp., 56497–56498
Meetings; Sunshine Act, 56498–56499
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 56499–56509
Reports and guidance documents; availability, etc.:
Panoramic and underwater irradiators authorized to possess greater than 370 terabecquerels of byproduct material, etc., 56509–56513

Pipeline and Hazardous Materials Safety Administration
NOTICES
Pipeline safety:
Waiver petitions—
BOC Gases, 56525
Southern LNG, 56524–56525

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 56513

Reclamation Bureau
NOTICES
Meetings:
Colorado River Basin Salinity Control Advisory Council, 56488–56489

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 56514
Public Utility Holding Company Act of 1935 filings, 56514–56520
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 56520–56522

Small Business Administration
NOTICES
Disaster loan areas:
Florida, 56522
Applications, hearings, determinations, etc.:
Civic Ventures Investment Fund, L.P., 56522

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
CSX Transportation, Inc., 56525–56526

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56527–56528
Meetings:
Former Prisoners of War Advisory Committee, 56528–56529
Voluntary Services National Advisory Committee, 56529
Women Veterans Advisory Committee, 56529–56530

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 56532–56539

Part III
Transportation Department, Federal Aviation Administration, 56542–56559

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.

7 CFR

Proposed Rules:

925 56378
944 56378

14 CFR

25 56343
39 (7 documents) 56344, 56347, 56349, 56351, 56355, 56358, 56361
71 (4 documents) 56365, 56366
73 56366
121 56542

Proposed Rules:

39 (5 documents) 56378, 56381, 56383, 56386, 56389
71 56391

21 CFR

Proposed Rules:

20 56394
135 56409
510 56394
514 56394
516 56394

26 CFR

Proposed Rules:

1 56418

33 CFR

100 (3 documents) 56367, 56369, 56371
117 56373

40 CFR

52 56374

Proposed Rules:

197 56418
271 56419
272 56419

49 CFR

Proposed Rules:

571 56425

50 CFR

20 56532
32 56376
679 56377

Proposed Rules:

17 (2 documents) 56426, 56434

Rules and Regulations

Federal Register
Vol. 70, No. 186
Tuesday, September 27, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM304; Special Conditions No. 25–299–SC]

Special Conditions: Airbus Model A318 Airplanes Equipped With Pratt and Whitney PW6000 Engines; Sudden Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Airbus Model A318–121 and A318–122 airplanes equipped with Pratt and Whitney PW6000 engines. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes, associated with engine size and torque load, which affect sudden engine stoppage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2141; facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1998, Airbus submitted an application to the FAA to amend Type Certificate No. A28NM to include the new Model A318 airplane equipped with Pratt and Whitney PW6000 engines (Model A318–121 and A318–122) or with optional CFMI CFM56 engines (Model A318–111 and A318–112). On May 14, 2002, Airbus applied for extension of the application for the Model A318 airplanes equipped with PW6000 engines and selected a new reference date of application of November 15, 2001.

The Airbus Model A318 airplane is a shortened reduced capacity version of the Model A320–200. The Model A318 will have a maximum passenger capacity of 136 versus a maximum passenger capacity of 179 for the Model A320 series airplanes and 145 for the Model A319 series airplanes. The fuselage length is reduced by four and one half frames (94 inches) compared to the Model A319 series airplanes. The maximum takeoff weight will be 59,000 kg (130,000 pounds) with growth options to 68,000 kg (150,000 pounds) versus maximum takeoff weight range of 68,000 kg to 77,000 kg for the Model A320 series airplanes and 64,000 kg to 75,500 kg for the Model A319 series airplanes. The Model A318 will be powered by all new Pratt and Whitney PW6000 engines or by CFMI CFM56–5B engines all in the 22,000 to 24,000 pound thrust range. Other changes include a new engine/nacelle and pylon adaptation for the PW6000 engine installation.

Type Certification Basis

Under the provisions of 14 Code of Federal Regulations (CFR) 21.101, Airbus must show that the Model A318 airplane, equipped with Pratt and Whitney PW6000 engines, meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A28NM or the applicable regulations in effect on the date of application for the change to the type certificate.

The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A318 airplane, equipped with Pratt and Whitney PW6000 engines, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A318 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other novel under the provisions of § 21.101.

Novel or Unusual Design Features

The Airbus Model A318 airplane, equipped with Pratt and Whitney PW6000 engines, will incorporate novel or unusual design features involving engine size torque load that affect sudden engine stoppage conditions. Because of rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. The special conditions for the Airbus Model A318 airplane, equipped with Pratt and Whitney PW6000 engines, contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Since 1957, Civil Aviation Regulation 4b.216 and its successors, currently § 25.361(b), have required that engine mounts and supporting structures be designed to withstand the limit engine torque load which is posed by sudden engine stoppage due to malfunction or structural failure, such as compressor jamming. Design torque loads associated with typical failure scenarios were estimated by the engine manufacturer and provided to the airframe manufacturer as limit loads. These limit loads were considered simple, pure

static torque loads. However, the size, configuration, and failure modes of jet engines have changed considerably from those envisioned when the engine seizure requirement of § 25.361(b) was first adopted. Current engines are much larger and are now designed with large bypass fans capable of producing much larger torque, if they become jammed.

Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines is sufficiently different and novel to justify issuance of special conditions to establish appropriate design standards. The latest generation of jet engines is capable of producing, during failure, transient loads that are significantly higher and more complex than those produced by the generation of engines in existence when the current regulation was developed.

In order to maintain the level of safety envisioned in § 25.361(b), more comprehensive criteria are needed for the new generation of high bypass engines. The proposed special condition would distinguish between the more common failure events involving transient deceleration conditions with temporary loss of thrust capability and those rare events resulting from structural failures. Associated with these events, the proposed criteria establish design limit and ultimate load conditions.

Discussion of Comments

Notice of proposed special conditions No. 25–05–03–SC for the Airbus Model A318 airplanes equipped with Pratt and Whitney PW6000 engines, was published in the **Federal Register** on April 11, 2005 (70 CFR 18321). No comments were received. However, the FAA has reconsidered the inclusion of auxiliary power units in these special conditions. While § 25.361(b) is interpreted to apply to auxiliary power units, the novel or unusual design features identified above do not apply to them. Therefore, auxiliary power units are excluded from those special conditions and would continue to be treated under the current § 25.361(b). Except for the removal of auxiliary power units, these special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Airbus Model A318–121 and A318–122 airplanes equipped with Pratt and Whitney PW6000 engines. Should Airbus apply at a later date for a change to the type certificate to include other type designs incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Condition

This action affects certain novel or unusual design features on the Airbus Model A318 airplane equipped with Pratt and Whitney PW6000 engines. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A318 airplane equipped with Pratt and Whitney PW6000 engines.

For turbine engine installations other than auxiliary power units, in lieu of compliance with § 25.361(b), the following special condition applies:

(a) The engine mounts, pylons and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(1) Sudden engine deceleration due to a malfunction which could result in a temporary loss of power or thrust.

(2) The maximum acceleration of the engine.

(b) For engine supporting structure, an ultimate loading condition must be considered that combines 1g flight loads with the transient dynamic loads resulting from each of the following:

(1) The loss of any fan, compressor, or turbine blade.

(2) Where applicable to a specific engine design, and separately from the conditions specified in paragraph (b)(1), any other engine structural failure that results in higher loads.

(c) The ultimate loads developed from the conditions specified in paragraphs (b)(1) and (b)(2) above are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

Issued in Renton, Washington, on September 14, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19206 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22483; Directorate Identifier 2004–NM–236–AD; Amendment 39–14292; AD 2005–19–27]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 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 A330–200 series airplanes. This AD requires inspecting to determine the serial numbers and flight cycles of the fuel jettison valves and removing certain valves as applicable. This AD also requires doing a one-time inspection for cracks of the remaining jettison valves and removing any cracked valves. This AD also requires modifying the diameters of the six attachment holes in the wing bottom skin panel before installing a new or serviceable jettison valve. This AD results from reports of fuel leaks in the fuel jettison system located on the wings. We are issuing this AD to prevent fuel leaks from the fuel jettison outlets, which could result in fuel vapors coming into contact with ignition sources, and consequent fire or explosion.

DATES: Effective October 12, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 12, 2005.

We must receive comments on this AD by November 28, 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 A330–200 series airplanes. The DGAC advises that there have been several reported cases of fuel leaks in the fuel jettison system located on the wings. These leaks were observed during refueling and during maintenance. Inspection of the system revealed the presence of cracks and, in certain cases, breaks at the jettison valve. The inspection also revealed several partial disconnects of the valve inlet and/or outlet pipe. Analysis of the inspection data showed that the use of maximum tolerances in production when attaching the jettison valve to the wingbox bottom skin can cause cracks due to static overloading. These cracks can grow under the effect of fuel pressure loads during refueling operations and cause the valve to rupture. A ruptured valve could cause the fuel pipes to disconnect from the jettison valve and consequent fuel leaks from the fuel jettison outlets, which could result in fuel vapors coming into contact with ignition sources, and consequent fire or explosion.

Relevant Service Information

Airbus has issued Service Bulletin A330–57–3078, Revision 01, dated August 4, 2004. The service bulletin specifies that operators should discard any fuel jettison valve with certain serial numbers, or that has accumulated more than 5,200 flight cycles since it was first installed. The service bulletin describes procedures for doing a visual inspection for cracks of the external surfaces of the mounting flange of any remaining jettison valve, and an eddy current inspection for cracks if the visual inspection shows no cracks. If any crack is detected in the mounting flange during either inspection, the service bulletin specifies that the jettison valve should be removed and discarded. If no crack is detected after the eddy current inspection, the service bulletin specifies that the jettison valve may be re-installed. The service bulletin also describes procedures for modifying the diameters of the six attachment holes in the wing bottom skin panel before installing the same, uncracked, jettison valve after the inspections, or before installing a new jettison valve after the previous jettison valve has been discarded. The service bulletin also describes procedures for an operational test of the fuel jettison system to ensure that there are no fuel leaks. This test is done during the installation of the jettison valve.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2004–127, dated August 4, 2004, to ensure the continued airworthiness of these airplanes in France.

The service bulletin refers to FR-HiTemp Service Bulletin HTE900169–28–1, Revision 1, dated November 8, 2004, as an additional source of service information for doing a visual inspection of the mounting flange of the jettison valve.

FAA's Determination and Requirements of This AD

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

Therefore, we are issuing this AD to prevent fuel leaks from the fuel jettison outlets. This AD requires accomplishing the actions specified in the service information described previously.

Clarification of Inspection Language

Although the French airworthiness directive specifies that operators ''inspect visually'' for cracks of the external surfaces of the mounting flange, this AD refers to that inspection a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the AD.

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
Inspection to determine serial number	1	$65	None	$65
Modification	13	65	No Charge	845

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–2005–22483; Directorate Identifier 2004–NM–236–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):

2005–19–27 Airbus: Amendment 39–14292. Docket No. FAA–2005–22483; Directorate Identifier 2004–NM–236–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, and –243 airplanes, certificated in any category; equipped with fuel jettison valve part number (P/N) HTE900169.

Unsafe Condition

(d) This AD results from reports of fuel leaks in the fuel jettison system located on the wings. We are issuing this AD to prevent fuel leaks from the fuel jettison outlets, which could result in fuel vapors coming into contact with ignition sources, and consequent fire or explosion.

Compliance

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

Service Bulletin Reference

(f) For the purposes of this AD the term ''service bulletin'' means the Accomplishment Instructions of Airbus Service Bulletin A330–57–3078, Revision 01, dated August 4, 2004.

Note 1: The service bulletin refers to FR-HiTemp Service Bulletin HTE900169–28–1, Revision 1, dated November 8, 2004, as an additional source of service information for doing a visual inspection of the mounting flange of the jettison valve.

Inspection to Determine Serial Number and Flight Cycles

(g) Within 40 months after the effective date of this AD, do the actions in paragraphs (g)(1) and (g)(2) of this AD in accordance with the service bulletin.

(1) Inspect the fuel jettison valves, P/N HTE900169, to determine whether any of the following serial numbers are installed: FR092BC to FR099BC inclusive, FR001BD to FR030BD inclusive, FR031BE to FR058BE inclusive, and M151VB292. A review of airplane maintenance records is acceptable in lieu of this inspection if information can be conclusively determined from that review. If any affected serial number is installed: Before further flight, remove the jettison valve and do the modification in paragraph (i) of this AD.

(2) Review airplane records to determine the number of flight cycles accumulated on the fuel jettison valves since first installation on the airplane. If any jettison valve has accumulated 5,200 total flight cycles or more, or if the number of flight cycles cannot be determined: Before further flight, remove the jettison valve and do the modification in paragraph (i) of this AD.

Detailed and Eddy Current Inspections for Cracks of the Mounting Flange

(h) Within 40 months after the effective date of this AD, for any jettison valve that was not removed in accordance with paragraph (g) of this AD, do a detailed inspection for cracks of the mounting flange of the jettison valve in accordance with the service bulletin.

(1) If no crack is found during the detailed inspection: Before further flight, do an eddy current inspection for cracks of the mounting

flange of the jettison valve in accordance with the service bulletin and, whether a crack is found or not, before further flight, do the modification required by paragraph (i) of this AD. If no crack is found during the eddy current inspection, the inspected jettison valve may be reinstalled during the modification required by paragraph (i) of this AD.

(2) If any crack is found during the detailed inspection: Before further flight, do the modification in paragraph (i) of this AD and do not reinstall the jettison valve.

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

(i) At the applicable time specified in paragraph (g) or (h) of this AD: Modify the diameters of the six attachment holes in the wing bottom skin panel, and install a new fuel jettison valve, or reinstall a previously installed fuel jettison valve that has been inspected and found to have no crack in accordance with paragraph (h) of this AD. Do all actions in accordance with the service bulletin.

Parts Installation

(j) As of the effective date of this AD, no person may install, on any airplane, a fuel jettison valve, P/N HTE900169, unless it has been inspected and had corrective actions done in accordance with paragraphs (g) and (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(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

(l) French airworthiness directive F–2004–127, dated August 4, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use Airbus Service Bulletin A330–57–3078, Revision 01, dated August 4, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 15, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18910 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22482; Directorate Identifier 2003–NM–009–AD; Amendment 39–14291; AD 2005–19–26]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model ATP Airplanes and Model HS 748 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model ATP airplanes and Model HS 748 airplanes. This AD requires doing a detailed inspection of the drain pipes of the fuel cross feed system and certain electrical cables for chafe damage; doing an inspection to determine the clearance between the cable loom and the cross feed drain pipe; and doing corrective actions if necessary. This AD results from a fire in the dry area of the wing due to severe chafe damage between an electrical cable and the fuel cross feed drain pipe. We are issuing this AD to prevent chafe damage of the electrical cable and fuel cross feed drain pipe that could lead to fuel leakage from the drain pipe and an ignition source from the electrical cable, which could result in a fire in the dry area of the airplane wing.

DATES: This AD becomes effective October 12, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 12, 2005.

We must receive comments on this AD by November 28, 2005.

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

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

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on all BAE Systems (Operations) Limited Model ATP airplanes and Model HS 748 airplanes. The CAA advises that an operator reported finding a fire in the dry area of the wing on a Model ATP airplane before takeoff. Severe chafe damage between an electrical cable and the drain pipe of the fuel cross feed system caused a small leakage of fuel from the drain pipe. Electrical sparks from the damaged electrical cable most likely ignited the fuel leakage. Chafe damage of the electrical cable and fuel cross feed drain pipe, if not prevented, could result in a fire in the dry area of the airplane wing.

The fuel cross feed pipe drain on certain Model ATP airplanes is identical to those on the affected Model HS 748 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Relevant Service Information

BAE Systems (Operations) Limited has issued Alert Service Bulletin ATP–

A28–021, Revision 1, dated September 26, 2002 (for Model ATP airplanes); and Alert Service Bulletin HS748–A28–44, dated September 26, 2002 (for Model HS 748 airplanes). The service bulletins describe procedures for accomplishing the following actions:

• Inspecting the cross feed drain pipe of the left and right wings between the fuel drain valve and the cross feed drain pipe for chafe damage, and doing the corrective action if necessary. The corrective action is replacing the cross feed drain pipe with a new drain pipe if material is lost from the wall thickness. If a replacement drain pipe is unavailable, the corrective action is removing the drain pipe and blanking the cross feed stub pipe.

• Inspecting the electrical cables on the terminal block of the left and right wings for chafe damage, and doing corrective actions if necessary. The corrective action is to replace the electrical wire with new electrical wire, if insulation has been lost; and to replace any damaged protective convoluted or spiral tubing with new tubing.

• Checking the clearance between the cable loom and the cross feed drain pipe on the left and right wings, and doing corrective actions if necessary. The corrective action is re-routing the cable loom for adequate clearance of the cross feed drain pipe.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA mandated the service information and issued British airworthiness directives 001–09–2002 and 002–09–2002 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination and Requirements of This AD

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

Therefore, we are issuing this AD to prevent chafe damage of the electrical cable and fuel cross feed drain pipe that could lead to fuel leakage from the drain pipe and an ignition source from the electrical cable, which could result in a fire in the dry area of the airplane wing. This AD requires accomplishing the actions specified in the service information described previously.

Costs of Compliance

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

If an affected airplane is imported and placed on the U.S. Register in the future, the required inspections would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD would be $130 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 an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2005–22482; Directorate Identifier 2003–NM–009–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):

2005–19–26 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14291. Docket No. FAA–2005–22482; Directorate Identifier 2003–NM–009–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

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

Unsafe Condition

(d) This AD results from a fire in the dry area of the wing due to severe chafe damage between an electrical cable and the fuel cross feed drain pipe. We are issuing this AD to prevent chafe damage of the electrical cable and fuel cross feed drain pipe that could lead to fuel leakage from the drain pipe and an ignition source from the electrical cable, which could result in a fire in the dry area of the airplane wing.

Compliance

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

Detailed Inspections

(f) Within 48 hours after the effective date of this AD, do the actions specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Alert Service Bulletin ATP–A28–021, Revision 1, dated September 26, 2002 (for Model ATP airplanes); or BAE Systems (Operations) Limited Alert Service Bulletin HS748–A28–44, dated September 26, 2002 (for Model HS 748 airplanes); as applicable.

(1) Do a detailed inspection of the cross feed drain pipe of the left and right wings between the fuel drain valve and the cross feed pipe for chafe damage. Before further flight, do any corrective action if applicable.

(2) Do a detailed inspection of the electrical cable between the terminal block and fuel boost pump of the left and right wings for chafe damage. Before further flight, do any corrective action if applicable.

(3) Do an inspection to determine the clearance between the cable loom and the cross feed drain pipe on the left and right wings. Before further flight, do any corrective action if applicable.

No Reporting Requirement

(g) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Special Flight Permit

(h) Prohibited.

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) British airworthiness directives 001–09–2002 and 002–09–2002 also address the subject of this AD.

Material Incorporated by Reference

(k) You must use BAE Systems (Operations) Limited Alert Service Bulletin ATP–A28–021, Revision 1, dated September 26, 2002; or BAE Systems (Operations) Limited Alert Service Bulletin HS748–A28–44, dated September 26, 2002; 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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 15, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18909 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20785; Directorate Identifier 2005–NM–002–AD; Amendment 39–14295; AD 2005–20–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 Airplanes, and Boeing Model 720 and 720B Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 707 airplanes, and all Boeing Model 720 and 720B series airplanes. This AD requires revising the Limitations section of the airplane flight manual (AFM). The AFM revisions include instructions for monitoring the low pressure lights for the center tank fuel pumps, and a statement prohibiting the resetting of a tripped circuit breaker for a fuel pump in any tank. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent dry operation of the fuel pumps in the center fuel tank, which could result in high temperatures or sparks inside the fuel tank, ignition of fuel vapors, and consequent fire or explosion. We are also issuing this AD to prohibit the resetting of a tripped circuit breaker for a fuel pump in any tank, which could allow an electrical fault to override the protective features of the circuit breaker, and result in sparks inside the fuel tank, ignition of fuel vapors, and consequent fire or explosion.

DATES: This AD becomes effective November 1, 2005.

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

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

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6501; 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 would apply to all Boeing Model 707 airplanes, and all Boeing Model 720 and 720B series airplanes. That NPRM was published in the **Federal Register** on April 1, 2005 (70 FR 16767). That NPRM proposed to require revising the Limitations section of the airplane flight manual (AFM). The AFM revisions include instructions for monitoring the low pressure lights for the center tank fuel pumps, and a statement prohibiting the resetting of a tripped circuit breaker for a fuel pump in any tank.

Comments

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

Support for the AD

One commenter supports the AD.

Request to Change Airplane Flight Manual (AFM) Wording to be Similar to Other AFMs

The commenter, the airplane manufacturer, requests that we revise the wording for the AFM revision that is specified in paragraph (f) of the NPRM. The commenter states that the wording should be changed to agree with the wording in an FAA-approved AFM, and to be similar to the AFM wording for other Boeing airplane models.

We agree with the commenter. The wording in the AFM revision should agree with the previously approved AFM and be similar to the AFM wording for other Boeing airplane models. These changes will reduce confusion and provide the greatest clarity for the AFM revision. We have revised paragraph (f) of the final rule to include the commenter's requested changes. However, operators that have previously incorporated the information in Approval Reference Number 045151 of the Boeing Model 707 AFM, dated December 6, 2004, are not required to change the AFM. That exclusion is noted in revised wording in paragraph (g) of the final rule that emphasizes previous accomplishment of this revision.

Request to Include Sentences for Ground Operations and Flight Operations in AFM Revision

The same commenter requests that we revise the first paragraph of the AFM revision specified in paragraph (f) of the NPRM to include two sentences regarding resetting the circuit breaker: one for the flight case and one for the ground case. The commenter states that the proposed change in wording would allow the circuit breaker to be reset during ground operations after maintenance has determined it is safe to do so. The commenter states that the proposed change is currently provided in most flightcrew operations manuals (FCOMs).

We do not agree with the commenter. We met with the commenter on June 30, 2005, to discuss this comment and our response to it. During the meeting we discussed the fact that the AFM provides limitations for flightcrews to follow during flight operations. The proposed change to the AFM would put the flightcrew in the role of maintenance by allowing the flightcrew to reset a tripped circuit breaker during ground operations. It is more appropriate to incorporate ground limitations (and warnings) in the airplane maintenance manual (AMM) rather than the AFM, to ensure that these procedures are done by maintenance personnel. We also discussed that the procedures in the FAA-approved AFM take priority over the FCOM, which is not FAA-approved. During the meeting, the commenter stated that, if the proposed changes are not made, it would revise the FCOM to prohibit resetting the fuel pump circuit breakers both in-flight and on the ground. We are considering additional rulemaking to revise the Airworthiness Limitations section of the AMM to ensure that maintenance does not reset the circuit breaker until it is safe to do so. We have not changed the final rule in this regard.

Explanation of Change in Applicability

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

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

There are about 225 airplanes of the affected design in the worldwide fleet. 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
Revising AFM	1	$65	None	$65	90	$5,850

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, 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):

2005–20–02 Boeing: Amendment 39–14295. Docket No. FAA–2005–20785; Directorate Identifier 2005–M–002–AD.

Effective Date

(a) This AD becomes effective November 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 707–100 long body, –200, –100B long body, and –100B short body series airplanes; Model 707–300, –300B, –300C, and –400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent dry operation of the fuel pumps in the center fuel tank, which could result in high temperatures or sparks inside the fuel tank, ignition of fuel vapors, and consequent fire or explosion. We are also issuing this AD to prohibit the resetting of a tripped circuit breaker for a fuel pump in any tank, which could allow an electrical fault to override the protective features of the circuit breaker, and result in sparks inside the fuel tank, ignition of fuel vapors, and consequent fire or explosion.

Compliance

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

Airplane Flight Manual (AFM) Revisions

(f) Within 30 days after the effective date of this AD: Revise the Limitations section of the Boeing 707 AFM to include the following information. This may be done by inserting a copy of this AD into the AFM. Thereafter, operate the airplane in accordance with the limitations specified in these AFM revisions.

''Fuel Pumps

For ground and flight operations, a fuel pump circuit breaker which has tripped must not be reset.

Center Tank Fuel Pumps

Center tank fuel pumps must be 'OFF' unless personnel are available in the flight deck to monitor low pressure lights.

Each center tank fuel pump switch must be positioned to 'OFF' without delay when the respective center tank fuel pump low pressure light illuminates.''

Note 1: When information identical to that in paragraph (f) of this AD has been included in the general revision of the AFM, the general revision may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Actions Accomplished Previously

(g) Incorporation of the information in Approval Reference Number 045151 of the Boeing Model 707 Airplane Flight Manual before the effective date of this AD is considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(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.

(3) 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

(i) None.

Issued in Renton, Washington, on September 16, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19140 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20627; Directorate Identifier 2004–NM–39–AD; Amendment 39–14290; AD 2005–19–25]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires repetitive eddy current inspections for cracks of the countersunk rivet holes in the lower lobe, adjacent to the radio altimeter cutouts; additional inspections, for certain airplanes, for cracks and/or corrosion; and further investigative and corrective action if any crack is found. This AD also provides an optional terminating action for the repetitive inspections. This AD results from reports of cracks in the fuselage skin of the lower lobe. We are issuing this AD to detect and correct fatigue cracks of the countersunk rivet holes, which could result in cracks of the fuselage

skin of the lower lobe, and consequent rapid depressurization of the cabin.

DATES: This AD becomes effective November 1, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 1, 2005.

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

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

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6438; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section. This docket number is FAA–2005–20627; the directorate identifier for this docket is 2004–NM–39–AD.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on March 17, 2005 (70 FR 12982). That NPRM proposed to require repetitive eddy current inspections for cracks of the countersunk rivet holes in the lower lobe, adjacent to the radio altimeter cutouts; additional inspections, for certain airplanes, for cracks and/or corrosion; and further investigative and corrective action if any crack is found. That NPRM also proposed 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 that have been received on the NPRM.

Request to Add Note to Provide Inspection Deviations for Existing Repairs

One commenter, an airplane operator, states that paragraph (g) of the NPRM does not address inspection deviations for airplanes that already have the repair doubler installed in accordance with Boeing Service Bulletin 737–53–1117. The commenter observes that, as the paragraph is currently worded, operators of these airplanes would be required to do an eddy current inspection in accordance with Part I of Boeing Special Attention Service Bulletin 737–53–1230, dated June 13, 2002. The commenter points out that operators of these airplanes would be forced to remove the doubler in order to do the eddy current inspection. The commenter notes that the section of the NPRM titled ''Relevant Service Information'' describes what to do for existing repairs, and states that this section matches Part II, Item 3, Note (a) of Boeing Special Attention Service Bulletin 737–53–1230. The commenter proposes that a similar note be added to paragraph (g) of the NPRM to provide inspection deviations for existing repairs.

We partially agree with the commenter. We agree that paragraph (g) of the NPRM is unclear with regard to the inspection options for the body station (BS) 390 cutout that has been previously modified in accordance with Boeing Service Bulletin 737–53–1117, Revision 1, dated April 6, 1989. If an operator has removed the doubler for other reasons, the current description in paragraph (g) of the NPRM would be sufficient; however, it would be beneficial to operators if the final rule provided optional inspections that could be performed without removing the doubler. We disagree with using the exact wording of Part II, Item 3, Note (a) of Boeing Special Attention Service Bulletin 737–53–1230, dated June 13, 2002. The instructions in that note describe specific actions affiliated with the preventive modification. The preventive modification, which includes inspection, can be accomplished in lieu of the initial inspection and will terminate ongoing inspections for that cutout only. However, we have revised paragraph (g) of the final rule to address inspection deviations for airplanes that already have the repair doubler.

Request to Clarify Wording in Paragraph (i)

Two commenters request that we reword paragraph (i) of the NPRM to make the requirements more clear. One commenter states that the conditions listed in paragraph (i) do not clearly state that all three conditions need to be met. The other commenter states that, with the current wording in paragraph (i), it is unclear if the inspections in Table 1 are required if one or both of the following conditions occur: A crack at BS 390, and an external doubler not installed. The commenter then suggests that paragraph (i) of the NPRM be revised as follows: ''For any airplane in Group 1, 2, 3, 4, or 5 of the special attention service bulletin, before or at the same time as the repair in paragraph (h) of this AD, inspect in accordance with Table 1 of this AD if one of the following conditions exist: (1) A skin crack at the cutout at BS 390 was found during any inspection including inspections required by paragraphs (g), (h), or (j) of this AD, or (2) an external repair doubler installed in accordance with Boeing Service Bulletin 737–53–1117, Revision 1, dated April 6, 1989, has not previously been installed.''

We partially agree. We agree that there is confusion in the interpretation of the requirements. The confusion is because the repair doubler installed in accordance with Boeing Service Bulletin 737–53–1117, which is not mandated by this final rule, is on an adjacent piece of fuselage skin, and extends into the area addressed by the NPRM. Boeing Special Attention Service Bulletin 737–53–1230 does not clearly address this additional configuration, so we agree that we should provide further clarification in the final rule so that operators have adequate instructions for compliance. We disagree with the exact wording change that the commenter proposes because all of the conditions must exist to perform the additional inspections addressed by paragraph (i). We have revised paragraph (i) of the final rule to provide the necessary clarification. This revision made it necessary to add new paragraphs (i)(1) and (i)(2) to the final rule. We have re-lettered the subsequent paragraphs accordingly.

Request to Add Requirement to ''Pre-Form'' the External Doubler

One commenter, the manufacturer, suggests that we add a requirement to ''pre-form'' the external doubler to the contour of the airplane prior to installation. The commenter states the repair and modification instruction in Boeing Service Bulletin 737–53–1117 do

not specify a requirement to contour the repair or modification doublers. These doublers are 0.1 inch or 0.08 inch thick respectively, which may create some pull-up pre-stresses in the skin during installation unless they are pre-formed. The commenter points out that the skin in this area is 0.063 inch thick, so the concern for pre-stress is minimal. However, in the interest of time, in lieu of issuing a revision to the service bulletin to address the pre-form issue, the commenter suggests that we add this requirement to the final rule. The commenter states that there have not been any reports of cracks or other discrepancies in service from these doublers.

We disagree with the commenter. This rule addresses issues associated with safety related cracking that are not addressed by other mandated programs. The commenter states that this lack of ''pre-forming'' information has not lead to safety related cracking. Therefore, we conclude that this ''pre-forming'' requirement can be categorized as a product improvement to the existing service bulletin. This information is best included in the next revision of the service bulletin, and subsequently proposed as an alternative method of compliance. In addition, the repair/modification done in accordance with Boeing Service Bulletin 737–53–1117, Revision 1, dated April 6, 1989, is subject to the Repair Assessment Program operational rule, and would receive inspections to detect any safety related cracking caused by lack of pre-forming. We have not changed the final rule in this regard.

Request To Clarify Inspection Requirements in Paragraph (h)

One commenter states that the reference in paragraph (i) of the NPRM to inspection requirements in paragraph (h) of the NPRM is incorrect because paragraph (h) provides for a repair, not an inspection instruction.

We disagree with the commenter. Paragraph (h) states, in part: ''* * *'' repair the area by doing all applicable corrective and further investigative actions ''* * *.'' The further investigative actions are inspections that are done as part of the repair. We have not changed the final rule in this regard.

Request To Clarify ''Relevant Service Information''

One commenter requests that we clarify the ''Relevant Service Information'' section of the NPRM. The commenter states that the sentence that says, ''for these airplanes, the preventive modification is removing the ten fasteners.* * *'' does not indicate clearly that the preventive modification is at BS 390. The commenter suggests that we add a reference to BS 390 to that sentence.

We agree with the commenter that clarifying the sentence would be helpful. However, since that section of the preamble does not reappear in the final rule, no change to the final rule is necessary.

Request To Fix Typographical Error

One commenter requests that we correct the spelling of the word ''either'' in the heading in Table 1 of the NPRM.

We agree with the commenter. However, this typographical error appeared only in the version of the NPRM that appeared in the Regulatory Guidance Library. The **Federal Register** version, which is the official version of the NPRM, has the word ''either'' spelled correctly.

Explanation of Further Changes Made To Clarify Requirements for Airplanes Modified in Accordance With Boeing Service Bulletin 737–53–1117

Several commenters, noted above, were concerned about issues related to airplanes that have been previously modified in accordance with Boeing Service Bulletin 737–53–1117. In light of these several concerns, we conducted a further review of Boeing Special Attention Service Bulletin 737–53–1230, dated June 13, 2002, which is the source of service information for this AD, and which also addresses, peripherally, airplanes modified in accordance with Boeing Service Bulletin 737–53–1117. The goal of our review was to determine if adequate instructions exist in Boeing Special Attention Service Bulletin 737–53–1230 for these airplanes, and, if we determined that the instructions were inadequate, to revise the final rule to include additional clarifying language for operators of these airplanes. We have concluded that additional clarifying language is necessary. The additional clarifying language does not increase the scope of work that was previously described in the NPRM, however it does allow relieving options for affected operators. The three clarifications included in the final rule are described below.

1. We have clarified the inspection options for the BS 390 cutout in paragraph (g) of the final rule, as noted above in ''Request to Add Note to Provide Inspection Deviations for Existing Repairs.''

2. We have clarified paragraph (h) of the final rule to include instructions for repairs at BS 390 ''with doubler installed.'' Airplanes in this configuration are not addressed in Boeing Special Attention Service Bulletin 737–53–1230, dated June 13, 2002, Table C, Part III—Repair. Therefore, paragraph (h), though adequate in the NPRM, has been revised in the final rule to specifically require repair of these airplanes according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings.

3. We have clarified paragraph (l) of the final rule (paragraph (j) of the NPRM) to specify that the inspection of the fastener hole countersink in accordance with Figure 2 of Boeing Special Attention Service Bulletin 737–53–1230, dated June 13, 2002, is not required for modified airplanes. This inspection is part of the preventive modification procedures in the service bulletin. This area is not accessible when the external doubler is installed in accordance with Boeing Service Bulletin 737–53–1117. It is not our intent to require operators to remove this doubler; therefore the countersink inspection is not required for these airplanes in the final rule.

Explanation of Additional Changes Made to This AD

We have simplified paragraph (h) and paragraph (k) of this AD (paragraph (i)(2) of the NPRM) by referring to the ''Alternative Methods of Compliance (AMOCs)'' paragraph of this AD for repair methods.

We have also revised the ''Alternative Methods of Compliance (AMOCs)'' paragraph in this AD to clarify the delegation authority for Authorized Representatives for the Boeing Commercial Airplanes Delegation Option Authorization.

Conclusion

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

Costs of Compliance

This AD affects about 3,132 airplanes worldwide. 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
Inspection	3	$65	No parts required	$195	1,004	$195,780

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–19–25 Boeing: Amendment 39–14290. Docket No. FAA–2005–20627; Directorate Identifier 2004–NM–39–AD.

Effective Date

(a) This AD becomes effective November 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–53–1230, dated June 13, 2002.

Unsafe Condition

(d) This AD was prompted by reports of cracks in the lower lobe fuselage skin of the affected airplanes. We are issuing this AD to detect and correct fatigue cracks of the countersunk rivet holes, which could result in cracks of the fuselage skin of the lower lobe, and consequent rapid depressurization of the cabin.

Compliance

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

Service Bulletin Reference

(f) The term ''special attention service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1230, dated June 13, 2002.

Repetitive Inspections

(g) Before the airplane accumulates 20,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later: Do the inspection in paragraph (g)(1) of this AD; or, for airplanes with an external repair doubler installed at body station (BS) 390, do the inspection in paragraph (g)(2) of this AD in lieu of the inspection in paragraph (g)(1) of this AD for BS 390 only; inspections at all other body stations must be done in accordance with paragraph (g)(1) of this AD. Repeat the applicable inspection thereafter at intervals not to exceed 4,500 flight cycles.

(1) Do an eddy current inspection for cracks of the surface area around the satellite holes of the radio altimeter cutouts between BS 390 and BS 450. Do the inspection with the fasteners installed in accordance with the special attention service bulletin.

(2) For airplanes that have an external repair doubler installed at BS 390 only, in accordance with Boeing Service Bulletin 737–53–1117, Revision 1, dated April 6, 1989, do an eddy current inspection of the external doubler for cracks around the satellite holes of the radio altimeter cutout; and do an eddy current inspection for cracks of the fuselage skin along the aft edge of the doubler from S–28L to S–28R. Do the inspections with the fasteners installed in accordance with the procedures in Figure 1 of the special attention service bulletin.

Repair

(h) If any crack is found during any eddy current inspection required by this AD: Before further flight, repair the area by doing all applicable corrective and further investigative actions in accordance with the special attention service bulletin. Accomplishment of the repair terminates the repetitive inspection requirements of paragraph (g) of this AD for the repaired area. Where the special attention service bulletin specifies to contact Boeing for appropriate action; for instructions about how to repair certain conditions, including repairs at BS 390 ''with doubler installed''; or where lack of specific repair instructions exist: Before further flight, repair using a method approved in accordance with paragraph (m) of this AD.

Additional Inspection and Repair for Certain Airplanes

(i) For any airplane in Group 1, 2, 3, 4, or 5 of the special attention service bulletin: Before or at the same time as the actions in paragraph (h) of this AD, inspect in accordance with Table 1 of this AD if both conditions in paragraphs (i)(1) and (i)(2) of this AD exist.

(1) A skin crack at the cutout at BS 390 was found during any inspection, including the inspections required by paragraphs (g), (h), and (j) of this AD.

(2) An external repair doubler has not been previously installed in accordance with Boeing Service Bulletin 737–53–1117, Revision 1, dated April 6, 1989.

TABLE 1.—SERVICE INFORMATION

Inspect in accordance with either—	
The Accomplishment Instructions of Boeing Service Bulletin 737–53–1117, Revision 1, dated April 6, 1989—	Figure 17 of the special attention service bulletin—
A detailed inspection for cracks in the fuselage lower skin in the area of the electronics bay cooling duct cutout.	An eddy current inspection for cracks of the exhaust port duct cutout edge and the 6 fastener locations; An eddy current and open-hole probe inspection for cracks of the satellite holes; and A general visual inspection for corrosion of the area under the repair.

Corrective Actions

(j) If any crack at the equipment cooling duct cutout is found that is less than 3 inches in length during the inspection required by paragraph (i) of this AD: Before further flight, stop-drill the crack or cracks and install an external repair doubler in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1117, Revision 1, dated April 6, 1989; or repair in accordance with Part III of the special attention service bulletin. If the special attention service bulletin specifies to contact Boeing for appropriate Action: Before further flight, repair using a method approved in accordance with paragraph (m) of this AD. Accomplishment of the repair terminates the repetitive inspection requirements of paragraph (g) of this AD for the repaired area.

(k) If any corrosion is found, or if any crack is found that is 3 inches in length or greater during the inspection required by paragraph (i) of this AD: Before further flight, repair using a method approved in accordance with paragraph (m) of this AD.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

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.''

Optional Terminating Action

(l) Installing preventive modification doublers in accordance with the special attention service bulletin, including the additional eddy current inspection with the fasteners removed (with no crack finding), terminates the repetitive inspection requirements of paragraph (g) of this AD. Where Figure 2 of the special attention service bulletin specifies to ''eddy current countersink inspect and open hole probe inspect the 16 satellite holes,'' and the airplane has an external repair doubler installed in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1117, Revision 1, dated April 6, 1989; that inspection is not required by this AD. If any crack is found during the eddy current inspection specified by this paragraph: Before further flight, discontinue the preventive modification and do the applicable actions in paragraph (h) of this AD.

Alternative Methods of Compliance

(m)(1) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings.

(3) 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

(n) You must use Boeing Service Bulletin 737–53–1117, Revision 1, dated April 6, 1989; and Boeing Special Attention Service Bulletin 737–53–1230, dated June 13, 2002; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, 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 15, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18911 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20850; Directorate Identifier 2005–NE–05–AD; Amendment 39–14297; AD 2005–20–04]

RIN 2120–AA64

Airworthiness Directives; Teledyne Continental Motors GTSIO–520 Series Reciprocating Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Teledyne Continental Motors (TCM) GTSIO–520 series reciprocating engines. This AD requires initial and repetitive visual inspections of the starter adapter assembly and crankshaft gear. This AD also requires unscheduled visual inspections of the starter adapter assembly and crankshaft gear due to a rough-running engine. This AD also requires replacement of the starter adapter shaft gear needle bearing with a certain bushing. Also, this AD requires installation of a certain TCM service kit at the next engine overhaul, or at the next starter adapter replacement, whichever occurs first. This AD results from six service difficulty reports and one fatal accident report received related to failed starter adapter assemblies. We are issuing this AD to prevent failure of the starter adapter assembly and or crankshaft gear, resulting in failure of the engine and possible forced landing.

DATES: This AD becomes effective November 1, 2005. The Director of the

Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 1, 2005.

ADDRESSES: You can get the service information identified in this AD from Teledyne Continental Motors, Inc., PO Box 90, Mobile, AL 36601; telephone (251) 438–3411. For the Teledyne Continental Motors Web site: Go to *http://www.TCMLINK.com*.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Senior Engineer, Propulsion, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349; telephone: (770) 703–6096, fax: (770) 703–6097.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to TCM GTSIO–520 series reciprocating engines. We published the proposed AD in the **Federal Register** on January 13, 2005 (70 FR 2333). That action proposed to require:

- Before further flight, adding a placard to the instrument panel within view of the pilot that states, in ¼ inch-high or higher characters, ''In accordance with AD (number to be provided), the pilot must report a rough-running engine that cannot be cleared by adjustment of the engine controls; particularly the fuel mixture setting, to maintenance personnel, immediately after landing.''
- Initial and repetitive visual inspections of the starter adapter assembly and crankshaft gear, and replacement of components as necessary.
- Unscheduled visual inspections of the starter adapter assembly and crankshaft gear due to a rough-running engine, and replacement of components as necessary.
- Replacement of the starter adapter shaft gear needle bearing, P/N 537721 with bushing, P/N 654472.
- Installation of TCM service kit, P/N EQ6642R, at next engine overhaul, or at next starter adapter replacement, whichever occurs first.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

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

Request To Delete Requirement for a Placard

Two commenters request that we delete the requirement for a placard in the cockpit. The placard would state that the pilot must report a rough-running engine that cannot be cleared by adjustment of the engine controls; particularly the fuel mixture setting, to maintenance personnel, immediately after landing. The commenters state that the placard provides no useful in-flight information. One of the commenters states that there is no chance that the commenter would depart with a rough running engine. We agree that the placard provides no useful in-flight information. Therefore, we have removed the placard requirement from the AD.

Parts Costs in the NPRM Are Underestimated

One commenter states that the parts costs in the NPRM are underestimated and are actually much higher. We disagree. However, we found that TCM agreed to reduce the prices for these parts. The price for the TCM service kit, P/N EQ6642R is reduced from $2,477 to $1,858, and the price for the bushing is reduced from $105 to $53.

Revised Mandatory Service Bulletin

The proposed AD referenced TCM Mandatory Service Bulletin (MSB) No. MSB94–4E, dated January 24, 2005. Since we issued the NPRM, TCM revised that bulletin. This AD references the revised SB, TCM MSB No. MSB94–4F, dated July 5, 2005.

Conclusion

We 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 determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

About 5,300 TCM GTSIO–520 series reciprocating engines of the affected design are in the worldwide fleet. We estimate that 4,240 engines installed on airplanes of U.S. registry will be affected by this AD. We also estimate that it will take about one work hour per engine to perform one of the inspections, and about one work hour per engine to perform the bushing installation. We also estimate that it will take about six work hours per engine to install TCM service kit, P/N EQ6642R. The average labor rate is $65 per work hour. We estimate that about 25% (1,060) of the engines will require an unscheduled (rough-running engine) inspection, that each engine has eight 100-hour inspections per year, and two 400-hour inspections per year. We also estimate that about 50% (2,120) of the engines will require the bushing installed and TCM service kit, P/N EQ6642R installed. Required bushings will cost about $53 per engine and required service kits will cost about $1,858 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $7,840,820.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–20–04 Teledyne Continental Motors: Amendment 39–14297. Docket No. FAA–2005–20850; Directorate Identifier 2005–NE–05—AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Teledyne Continental Motors (TCM) GTSIO–520 series reciprocating engines. These engines are installed on, but not limited to, Twin Commander (formerly Aero Commander) model 685, Cessna model 404, 411 series, and 421 series, British Aerospace, Aircraft Group, Scottish Division model B.206 series 2 and Aeronautica Macchi, model AM–3 airplanes.

Unsafe Condition

(d) This AD results from six service difficulty reports and one fatal accident report received related to failed starter adapter assemblies. We are issuing this AD to prevent failure of the starter adapter assembly and or crankshaft gear, resulting in failure of the engine and possible forced landing.

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.

Starter Adapter Shaft Gear Needle Bearing Replacement

(f) If, during an inspection required by paragraph (g), (h), (i), or (j) of this AD, you find needle bearing, part number (P/N) 537721, installed in the crankcase, replace it with bushing, P/N 654472, before reassembling components. Use the bushing installation procedure specified in Part 4 of TCM Mandatory Service Bulletin (MSB) No. MSB94–4F, dated July 5, 2005.

Unscheduled Inspections for Rough-Running Engines

(g) For any engine that experiences rough running conditions regardless of time-in-service (TIS), do the following:

(1) Before further flight, perform the inspection procedures specified in Part 1 and Part 3 of TCM MSB No. MSB94–4F, dated July 5, 2005, and replace components as necessary.

(2) An engine is considered rough-running if there is a sudden increase in the perceived vibration levels that cannot be cleared by adjustment of the engine controls; particularly the fuel mixture setting. Information on a rough running engines can be found in the aircraft manufacturer's Airplane Flight Manual, Pilot's Operating Handbook, or Aircraft Owners Manual.

100-Hour and Annual Inspections

(h) For any engine, at the next 100-hour or annual inspection, whichever occurs first, do the following:

(1) Perform the inspection procedures specified in Part 2 of TCM MSB No. MSB94–4F, dated July 5, 2005, and replace components as necessary.

(2) Thereafter, at each 100-hour inspection, (plus or minus 10 hours), and annual inspection, perform repetitive inspections and component replacements as specified in paragraph (h)(1) of this AD.

Starter Adapters With 400 Hours or More Time-In-Service (TIS) or Unknown TIS

(i) For any starter adapter with 400 hours or more TIS or unknown TIS on the effective date of this AD, do the following:

(1) Within 25 hours TIS, perform the inspection procedures specified in Part 3 of TCM MSB No. MSB94–4F, dated July 5, 2005, and replace components as necessary.

(2) Thereafter, at 400-hour TIS intervals, (plus or minus 10 hours), perform repetitive inspections and component replacements specified in Part 3 of TCM MSB No. MSB94–4F, dated July 5, 2005, and replace components as necessary.

Starter Adapters With Fewer Than 400 Hours TIS

(j) For any starter adapter with fewer than 400 hours TIS on the effective date of this AD, do the following:

(1) Upon accumulation of 400 hours TIS, (plus or minus 10 hours), perform the inspection procedures specified in Part 3 of TCM MSB No. MSB94–4F, dated July 5, 2005, and replace components as necessary.

(2) Thereafter, at 400-hour TIS intervals, (plus or minus 10 hours), perform repetitive inspections and component replacements, as specified in Part 3 of TCM MSB No. MSB94–4F, dated July 5, 2005, and replace components as necessary.

Installation of TCM Service Kit, EQ6642R

(k) At the next engine overhaul or starter adapter replacement after the effective date of this AD, whichever occurs first, do the following:

(1) Install TCM service kit, P/N EQ6642R. Use the service kit installation procedures specified in Part 5 of TCM MSB No. MSB94–4F, dated July 5, 2005.

(2) Continue performing the inspections and component replacements specified in paragraphs (g), (h), and (i) of this AD.

Prohibition of Special Flight Permits for Rough-Running Engines

(l) Special flight permits are prohibited for rough-running engines described in paragraph (g)(2) of this AD.

Alternative Methods of Compliance

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

Related Information

(n) European Aviation Safety Agency AD 2004–0006, dated December 15, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(o) You must use Teledyne Continental Motors Mandatory Service Bulletin No. MSB94–4F, dated July 5, 2005, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Teledyne Continental Motors, Inc., PO Box 90, Mobile, AL 36601; telephone (251) 438–3411 for a copy of this service information. For the Teledyne Continental Motors Web site: Go to *http://www.TCMLINK.com.* You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the Internet at *http://dms.dot.gov*, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on September 20, 2005.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–19149 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20356; Directorate Identifier 2004–NM–115–AD; Amendment 39–14294; AD 2005–20–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires repetitive inspections of the stiffeners at left buttock line (LBL) and right buttock line (RBL) 6.15 for cracks; and replacement of both stiffeners with new, improved stiffeners if any stiffener is found cracked. This AD also allows replacement of both stiffeners at LBL and RBL 6.15 with new, improved stiffeners, which terminates the repetitive inspections. This AD is prompted by reports of cracks in the stiffeners at LBL and RBL 6.15 on the rear spar of the wing center section. We are issuing this AD to detect and correct cracks in the stiffeners at LBL and RBL 6.15, which could result in damage to the keel beam structure and consequently reduce the capability of the airplane to sustain flight loads.

DATES: This AD becomes effective November 1, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of November 1, 2005.

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

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

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6440; fax (425) 917–6590.

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on February 15, 2005 (70 FR 7693). (A correction of the NPRM was published in the **Federal Register** on May 19, 2005 (70 FR 28988).) That NPRM proposed to require repetitive inspections of the stiffeners at left buttock line (LBL) and right buttock line (RBL) 6.15 for cracks; and replacement of both stiffeners with new, improved stiffeners if any stiffener is found cracked. That NPRM also proposed to allow replacement of both stiffeners at LBL and RBL 6.15 with new, improved stiffeners, which would terminate the repetitive inspections.

Comments

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

Support for the Proposed AD

Two commenters support the proposed AD.

Request To Use Operator Equivalent Procedures

One commenter requests that we revise paragraph (h) of the proposed AD to allow the use of FAA-approved, operator equivalent procedures for draining and gaining access to the center fuel tanks. The commenter states that Parts II and III of Boeing Alert Service Bulletin 737–57A1269, Revision 1, dated September 16, 2004, contain work steps for de-fueling and purging the center tanks. The commenter further states that mandating how the fuel tanks are purged does not directly affect the means of correcting the unsafe condition addressed in the proposed AD.

We agree that the procedures specified in Parts II and III are intended for gaining access to the center tanks. We also agree that using an equivalent procedure to gain access would not adversely affect the means of correcting the unsafe condition, which is to detect and correct cracks in the stiffeners at LBL and RBL 6.15. Therefore, we have revised the first sentence of paragraph (h) of this AD to require accomplishing the applicable actions in Part IV through Part IX of the service bulletin.

Request for Credit for Previous Inspections

One commenter requests that inspections performed in accordance with Boeing All Operator Telex (AOT) M–7200–01–00426, dated February 19, 2001, be considered acceptable for compliance with the inspections specified in paragraph (g) of the proposed AD. The commenter states that both Boeing AOT M–7200–01–00426 and Boeing Alert Service Bulletin 737–57A1269, Revision 1, dated September 16, 2004, provide instructions for doing a detailed inspection of the stiffeners at LBL and RBL 6.15 on the rear spar of the wing center section within the same compliance time.

We agree that the detailed inspections specified in Boeing AOT M–7200–01–00426 are acceptable for compliance with the corresponding requirements of this AD. We have added a new paragraph (k) to this AD to give credit and re-lettered the subsequent paragraphs accordingly.

Request To Use New Stiffeners of the Existing Type Design

Two commenters request that we revise paragraph (h) of the proposed AD to add the option of replacing a cracked stiffener with a new stiffener of the existing type design (made from 7075–T6511 aluminum extrusion). One commenter states that since we have determined a repetitive inspection interval of 4,500 flight cycles provides an adequate level of safety for detecting cracks in the existing stiffeners, then replacement with new stiffeners of the existing type design should also provide an adequate level of safety if the repetitive inspections are continued. Although there is an ample supply of new stiffeners of the existing type design available, both commenters are concerned that there is an insufficient supply of new, improved stiffeners (made from 2024–T351 aluminum alloy plate) to comply with the proposed replacements.

We do not agree. The manufacturer has confirmed that there is a sufficient supply of new, improved stiffeners available to comply with this AD. Therefore, no change to this AD is necessary in this regard.

Request To Replace a Stiffener, Only if Cracked

Two commenters request that we revise paragraph (h) of the proposed AD to state that, if only one of the two stiffeners is found cracked, operators would be required to replace only the cracked stiffener instead of both stiffeners. As justification, the first commenter states that it frequently finds only one cracked stiffener during inspections of the stiffeners at LBL and RBL 6.15. Both commenters believe that the proposed AD should allow the option of replacing only the cracked stiffener provided that the repetitive inspections for cracking are continued until both stiffeners are eventually replaced. The second commenter supports this change because replacing both stiffeners requires additional labor and material. The commenter also states that the aggressive initial inspection threshold will force operators to inspect affected airplanes outside of a heavy maintenance visit. The commenter asserts that the additional impact of replacing both stiffeners will strain available resources.

We do not agree because the new, improved stiffeners are much more rigid than the stiffeners of the existing type design. Replacing only one of the two stiffeners will lead to changes in the loading of the structure and premature fatigue of the new, improved stiffener. However, we acknowledge that replacing a cracked stiffener with a new stiffener of the existing type design will not adversely affect the relative stiffness of the two keel beam stiffeners, since they would be the same type design. If service information containing repair instructions and subsequent inspection requirements for replacing a cracked stiffener with a new stiffener of the existing type design is developed, under the provisions of paragraph (l) of this AD, we may consider requests for approval of an AMOC. Sufficient data must be submitted to substantiate that such a design change would provide an acceptable level of safety. Therefore, no change to this AD is necessary in this regard.

Request To Allow Temporary Repairs

Three commenters request that we revise the proposed AD to allow operators to make temporary repairs until cracked stiffeners can be replaced. One commenter suggests adding an interim repair plan to the proposed AD to give operators time to schedule the terminating action (replacement of cracked stiffeners with new, improved stiffeners). The commenter proposes that an interim repair plan could consist of stop-drilling small cracks where possible and reducing the repetitive inspection intervals to monitor crack growth, until the terminating action could be accomplished. The commenter is concerned it will not be able to comply with the requirements of the proposed AD because of the short initial inspection threshold and number of affected airplanes in its fleet.

The second commenter states that repairs done in accordance with Boeing AOT M–7200–01–00426, dated February 19, 2001, and Repair Sketch LOR–760 will take less time than replacement of the stiffeners, especially since most of its affected airplanes will be inspected outside of a heavy maintenance visit. The third commenter asks if we would consider the two temporary repairs, which do not require access into the center tank, as an AMOC to the proposed AD.

We partially agree. The FAA is working with the manufacturer to establish appropriate inspection and replacement requirements for this interim repair. Once this evaluation is concluded we may, under the provisions of paragraph (l) of this AD, we approve the subject interim repairs as an AMOC. We do not consider that delaying this final rule is warranted.

Request To Revise Compliance Time

One commenter requests that we extend the compliance time of the initial inspection, from 180 days to 15 months for airplanes that have accumulated less than 30,000 total flight cycles, to allow affected operators to perform the inspection during a regularly scheduled maintenance interval. The proposed AD reported that cracked stiffeners were found on two airplanes with over 40,000 total flight cycles and on a third airplane with just over 20,000 total flight cycles. The commenter believes that the data are not consistent enough to warrant a short compliance time for airplanes that have accumulated fewer than 40,000 total flight cycles. To comply with the proposed AD, the operator states that it would have to inspect more than 1 airplane per week, since the proposed AD affects the majority of its fleet. The operator also states that its operations would be negatively impacted if several of its airplanes required the terminating action, estimated at 250 work hours.

We do not agree with the commenter's request. The commenter provides no technical justification for revising this inspection interval. Furthermore, since issuing the proposed AD, we have received numerous additional reports of cracked stiffeners. Eight of those reports included airplanes that have accumulated fewer than 30,000 total flight cycles. We have determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate safely before the inspection is accomplished.

Request To Revise "Cost of Compliance"

One commenter estimates that the proposed inspection would take about 4 work hours, not 1 work hour as we specified in the proposed AD. We infer that the commenter would like us to revise the "Cost of Compliance" section.

We do not agree, since the commenter has not provided justification for the increase in work hours. Our cost estimate is based on information that the manufacturer has provided to us, and we point out that 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. Therefore no change to this AD is necessary in this regard.

Explanation of Changes Made to This AD

We have simplified paragraph (h) of this AD by referring to the "Alternative Methods of Compliance (AMOCs)" paragraph of this AD for repair methods. Also, we have revised the "Alternative Methods of Compliance (AMOCs)" paragraph in this AD to clarify the delegation authority for Authorized Representatives for the Boeing Commercial Airplanes Delegation Option Authorization.

Conclusion

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

Costs of Compliance

This AD affects about 3,132 airplanes worldwide. The following table provides the estimated costs, at an average labor rate of $65 per hour, for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection, per inspection cycle	1	None	$65, per inspection cycle	1,384	$89,960, 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. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–20–01 Boeing: Amendment 39–14294. Docket No. FAA–2005–20356; Directorate Identifier 2004–NM–115–AD.

Effective Date

(a) This AD becomes effective November 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by cracks in the stiffeners at left buttock line (LBL) and right buttock line (RBL) 6.15 on the rear spar of the wing center section. We are issuing this AD to detect and correct cracks in the stiffeners at LBL and RBL 6.15, which could result in damage to the keel beam structure and consequently reduce the capability of the airplane to sustain flight loads.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1269, Revision 1, dated September 16, 2004.

Initial and Repetitive Inspections

(g) Before accumulating 15,000 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later: Do a detailed inspection of the stiffeners at LBL and RBL 6.15 for cracks, in accordance with Part I of the service bulletin. Thereafter at intervals not to exceed 4,500 flight cycles, repeat the detailed inspection until the stiffeners at LBL and RBL 6.15 have been replaced with new, improved stiffeners, in accordance with paragraph (h) or (i) of this AD.

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

Replacement of Cracked Stiffeners

(h) If any crack is found during any inspection required by this AD, before further flight, replace both stiffeners with new, improved stiffeners by doing all of the applicable actions in Part IV through Part IX, as applicable, of the service bulletin; except where the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD. Accomplishing the replacement terminates the repetitive inspections required by paragraph (g) of this AD.

Optional Terminating Action

(i) Replacement of both stiffeners at LBL and RBL 6.15 with new, improved stiffeners in accordance with paragraph (h) of this AD terminates the repetitive inspections required by this AD.

Credit for Previous Service Bulletin

(j) The actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–57A1269, dated December 4, 2003, are acceptable for compliance with the corresponding actions required by this AD.

Credit for Previous Inspections

(k) Inspections done before the effective date of this AD in accordance with Boeing All Operator Telex M–7200–01–00426, dated February 19, 2001, are acceptable for compliance with the requirements of paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) An AMOC that provides an acceptable level of safety may be used for any repair

required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(m) You must use Boeing Alert Service Bulletin 737–57A1269, Revision 1, dated September 16, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on September 16, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19144 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–18788; Directorate Identifier 2003–NM–203–AD; Amendment 39–14296; AD 2005–20–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires repetitive inspections of the intercostal webs, attachment clips, and stringer splice channels for cracks; and corrective action if necessary. This AD is prompted by reports of fatigue cracks on several Boeing Model 737–200 series airplanes. We are issuing this AD to detect and correct fatigue cracking of the intercostals on the forward and aft sides of the forward entry door, which could result in loss of the forward entry door and rapid decompression of the airplane.

DATES: This AD becomes effective November 1, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of November 1, 2005.

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

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2005–18788; the directorate identifier for this docket is 2003–NM–203–AD.

FOR FURTHER INFORMATION CONTACT: Howard Hall, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6430; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That action, published in the **Federal Register** on August 6, 2004 (69 FR 47808), proposed to require repetitive inspections of the intercostal webs, attachment clips, and stringer splice channels for cracks; and corrective action if necessary.

Comments

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

Qualified Support for the Proposed AD

One commenter, an operator, stated that the proposed AD is acceptable provided that the service bulletin referenced in the proposed AD is corrected to reflect the proper work instructions and to reference accurate figures for accomplishment.

The FAA cannot respond to the generality of the commenter's statement. However, other commenters have requested clarification on certain aspects of the work instructions and requested certain revision of the ''Costs of Compliance'' section of this AD. Those comments are specified and responded to in the appropriate paragraphs below.

Request for Clarification in Paragraph (k) of the Proposed AD

Two commenters request that paragraph (k) be revised to clarify that the reference to using Figure 201 instead of Figure 202 of the service bulletin only applies to Model 737–400 series airplanes.

We agree that paragraph (k) of the AD should be clarified and have revised the AD accordingly.

Request To Withdraw the Proposed AD

One commenter, an operator, states that the Maintenance Planning Document (MPD) is the logical document to accomplish the main objectives of the inspections specified in the proposed AD. The commenter suggests that it makes more sense to revise MPD Task S53–22-A–2, rather than to issue an AD. We infer that the commenter is requesting that the proposed AD be withdrawn.

We do not agree. We are obligated by part 39 of the Federal Aviation Regulations (FAR) to appropriately address any identified unsafe condition that is likely to exist on other airplanes. The MPD is appropriate for addressing routine maintenance of critical structural components. However, operators may submit their specific and particular MPD task cards for consideration as an alternative method of compliance (AMOC) if they wish, in accordance with paragraph (n) of the AD. No change is necessary to the AD in this regard.

Request for More Information Regarding Paragraph (k) of the Proposed AD

One commenter, an operator, requests that inspection specifics be added to paragraph (k) of the proposed AD for the stringer–16L (S–16L) area in the post-repair configuration. The commenter does not believe that Boeing Special Attention Service Bulletin 737–53–1204, dated June 19, 2003, referenced in the proposed AD as the appropriate source of service information, provides sufficient inspection specifics in Figure 1.

The FAA does not agree that further inspection specifics are necessary to clarify paragraph (k) of the AD. Figure

1 does not specifically show the repair/modification configurations at S–16L, and is simply intended to show typical crack locations and to identify the structural components that require inspection. Since the general inspection details provided in Figure 1 are applicable to both pre- and post-repair/modification configurations, no change to the AD is necessary in this regard.

Request To Allow ''Credit'' for Certain Repairs

One commenter, an operator, requests that repairs on the affected intercostals that are installed prior to the effective date of the AD be addressed. The operator states that the proposed AD specifies that certain repairs must be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. The operator requests that the final rule allow credit for any repairs previously approved by the Seattle ACO.

We do not agree that previous repairs need to be addressed other than through the normal process as stated above by the commenter. Other than the repairs already identified at S–16L, we are not aware of any specific pre-existing repair configurations that should be addressed in the final rule. The Manager, Seattle ACO, can approve design data for previously installed or newly installed repair configurations prior to the issuance of this AD. However, approval as an AMOC with the AD cannot be given until the date the final rule is effective. No change is necessary to the AD in this regard.

Requests To Address Previously Accomplished Modification/Repairs

Two commenters, both operators, request that provision for ''previous or newly accomplished'' installations of the repair be added to paragraph (k) of the proposed AD.

We acknowledge the commenters' concern and partially agree. Paragraph (k) of the AD, as worded in the AD, simply permits deferring the repetitive inspections if the installation of the repair as a preventative modification or corrective action is accomplished in accordance with Part 1 of the Work Instructions of the service bulletin. We did not specify that installation of the repair must be performed either before or after the effective date of the AD, since, in this case, it does not matter when it is accomplished. No change is necessary to the AD in this regard.

Requests To Extend Initial Compliance Time of Paragraph (g) of the Proposed AD

Several commenters request that the grace period specified in paragraph (g), ''4,500 flight cycles after the effective date of the AD,'' be extended to 7,500 or 8,000 flight cycles. One commenter states that the most critical area (STR 16L between Body Station (BS) 348.2 and BS 360) can only be inspected correctly by accessing additional areas, which may include removing lavatories or galleys. The commenters contend that extending the grace period of the initial compliance time would allow most operators to accomplish the requirements of paragraph (g) during normal scheduled maintenance.

We do not agree that the grace period should be extended beyond 4,500 flight cycles. We have determined that the grace period of 4,500 is appropriate and adequate to maintain an acceptable level of safety. The grace period represents more than two years of average operation, during which time most operators will have accomplished regularly schedule maintenance. The commenter has provided no technical data to show that extending the grace period compliance time to 7,500 or 8,000 flight cycles would continue to provide an acceptable level of safety. However, under the provisions of paragraph (n) of the AD, we may consider requests for adjustments to the grace period for the initial compliance time if sufficient data are submitted to substantiate that such an extension of the grace period would provide an acceptable level of safety. No change is necessary to the AD in this regard.

Request To Extend Initial Compliance Time of Paragraph (g) of the Proposed AD for Certain Areas

One commenter requests that, for areas that are non-critical, the compliance time be extended from 15,000 total flight cycles to 25,000 total flight cycles. The commenter notes that it is not clear why the non-critical areas have the same initial threshold as the critical area (S–16L). The commenter contends that the compliance time should be extended for those areas other than S–16L.

We do not agree. We have received recent service reports of cracked structure occurring at locations other than S–16L as early as 18,910 total flight cycles. No change is necessary to the AD in this regard.

Request for Credit for Similar Inspections

One commenter, an operator, notes that certain inspections similar to the inspections in the proposed AD are already required under the Corrosion Prevention and Control Program (CPCP). Although the commenter acknowledges that the intensity and type of inspection is not identical to the inspections specified in the proposed AD, the commenter requests that some relief of the compliance time should be considered if the CPCP inspections have been performed recently.

We do not agree to extend the compliance time. In developing this AD, we considered the inspections of the baseline CPCP program, but also noted that certain operators may be using different CPCP programs. However, under the provisions of paragraph (n) of the AD, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. No change is necessary to the AD in this regard.

Request To Clarify the Failure Mechanism

One commenter, an operator, requests that we explain why the FAA and the manufacturer disagree on the potential failure mechanism. The commenter points out that the manufacturer does not indicate that the fatigue cracking could result in loss of the forward entry door, only that incorporation of the service bulletin would prevent possible decompression and unscheduled down time.

We acknowledge that the manufacturer's service bulletin does not specifically advise that ''loss of the forward entry door'' could occur as a result of the identified unsafe condition. However, the manufacturer and the FAA agree that several potential failure scenarios, such as loss of the forward entry door, could occur. Both the manufacturer and the FAA agree that an unsafe condition has been identified and is likely to exist or to develop in other airplanes. Therefore, the actions specified in the AD are necessary to detect and correct fatigue cracking of the intercostals of the forward entry door. No change is necessary to the AD in this regard.

Request To Revise the Costs of Compliance

Several commenters request that the ''Costs of Compliance'' section be revised to reflect the number of work hours required for access.

We do not agree that the cost estimate provided in the proposed AD should be revised. Based on the best data available, the manufacturer provided the number of work hours (two) necessary to do the required actions.

This number represents the time necessary to perform only the actions actually required by this AD. We recognize that, in doing the actions required by an AD, operators may incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which may vary significantly among operators, are almost impossible to calculate. No change is necessary to the AD in this regard.

Request To Replace Parts Without FAA Approval

One commenter, an operator, asks that allowance be made in paragraph (m) for the replacement of parts without the need to contact the FAA for approval.

We do not agree with the commenter's request. Since the service bulletin referenced in this AD does not provide specific instructions for repair (replacing the parts), operators must perform the repair in accordance with a method approved as specified in paragraph (m) of this AD.

Explanation of Change Made to This AD

Since the issuance of the proposed AD, Boeing has received a Delegation Option Authorization (DOA). We have revised this AD 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.

Conclusion

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

Costs of Compliance

This AD will affect about 3,113 airplanes worldwide and 876 airplanes of U.S. registry. The required actions will take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $113,880, or $130 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–20–03 Boeing: Amendment 39–14296. Docket No. FAA–2005–18788; Directorate Identifier 2003–NM–203–AD.

Effective Date

(a) This AD becomes effective November 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, as identified in Boeing Special Attention Service Bulletin 737–53–1204, dated June 19, 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of fatigue cracks on several Boeing Model 737–200 series airplanes. We are issuing this AD to detect and correct fatigue cracking of the intercostals on the forward and aft sides of the forward entry door, which could result in loss of the forward entry door and rapid decompression of the airplane.

Compliance

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

Service Bulletin Definition

(f) The term ''service bulletin,'' as used in this AD, means Boeing Special Attention Service Bulletin 737–53–1204, dated June 19, 2003.

Initial Compliance Time

(g) Before the accumulation of 15,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later: Do the inspections specified in paragraph (h) or (i) of this AD, as applicable.

Inspection for Passenger Configuration Airplanes

(h) For Group 1 passenger airplanes identified in the service bulletin: Perform a detailed inspection of the intercostal web, attachment clips, and stringer splice channels for cracks; and a high frequency eddy current inspection of the stringer splice channels, located forward and aft of the forward entry door, for cracks; per Parts 1 and 2 of the Work Instructions of the service bulletin.

Inspection for Cargo Configuration Airplanes

(i) For Group 2 cargo airplanes identified in the service bulletin: Perform a detailed inspection of the intercostal webs and attachment clips located forward of the forward entry door for cracks, per Part 3 of the Work Instructions of the service bulletin.

Repetitive Inspections

(j) If no crack is found during any inspection required by paragraph (h) or (i) of this AD, repeat the inspections in paragraph (h) or (i) of this AD at the applicable time specified in Table 1 of this AD, except as provided by paragraph (k) of this AD.

TABLE 1.—REPETITIVE INSPECTION INTERVAL

Airplane group number in Service Bulletin	For intercostal location—	Repeat inspections at intervals not to exceed—
Group 1	Stringer–16L (S–16L), from Body Stringer 348.2 to BS 360 (aft of door)	4,500 flight cycles.
Group 1	S–7L through S–15L, from BS 348.2 to BS 360 (aft of door)	25,000 flight cycles.
Group 1 and 2	S–7L through S–16L, from BS 294.5 to BS 303.9 (forward of door)	25,000 flight cycles.

Deferral of Certain Repetitive Inspections

(k) For intercostal webs at S–16L from BS 348.2 to BS 360: Installation of the repair as a preventative modification or corrective action per Part 1 of the Work Instructions of the service bulletin defers the repetitive inspections to intervals not to exceed 25,000 flight cycles. For Model 737–400 series airplanes, use 737–400 Structural Repair Manual (SRM) 53–10–04, Figure 201, instead of Figure 202.

Corrective Actions

(l) If any crack is found during any inspection required by paragraph (h) or (i) of this AD, perform the actions specified in paragraphs (l)(1) through (l)(3) of Table 2 of this AD, as applicable. Repeat the inspections at the applicable time specified in Table 1 of this AD, except as provided by paragraph (k) of this AD.

TABLE 2.—CORRECTIVE ACTIONS

During any inspection specified in—	If any crack is found in—	At intercostal location—	Before further flight—
(1) Part 1 of the Work Instructions of the service bulletin.	(i) The intercoastal web	S–16L, from BS 348.2 to BS 360 (aft of door).	Repair per Part 1 of the Work Instructions of the service bulletin, except the service bulletin specifies to contact Boeing for repair instructions, before further flight, do the repair specified in paragraph (m) of this AD. Use 737–400 SRM 53–10–04, Figure 201, instead of Figure 202, as applicable (see Note 1).
	(ii) An attachment clip or stringer splice channel.	S–16L, from BSDo 348.2 to BS 360 (aft of door).	Do the repair specified in paragraph (m) of this AD.
(2) Part 2 of the Work Instructions of the service bulletin.	An intercoastal web, attachment clip, or stringer splice channel.	S–7L through S–16L, from BS 294.5 to BS 303.9 (forward of door); and S–7L through S–15L, from BS 348.2 to BS 360 (aft of door).	Do the repair specified in paragraph (m) of this AD.
(3) Part 3 of the Work Instructions of the service bulletin.	An intercoastal web or attachment clip.	S–7L through S–16L, from BS 294.5 to BS 303.9 (forward of door).	Do the repair specified in paragraph (m) of this AD.

Note 1: The service bulletin specifies to repair any crack found at the S–16L intercostal (BS 348.2–360) on Boeing Model 737–400 series airplanes per 737–400 SRM 53–10–04, Figure 202. Figure 202 does not exist; the correct figure is 737–400 SRM 53–10–04, Figure 201.

Repair

(m) At the time specified in Table 2 of this AD, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) An AMOC that provides an acceptable level of safety may be used for corrective actions per data meeting the type certification basis of the airplane approved by a Boeing DOA Organization AR who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD.

Material Incorporated by Reference

(o) You must use Boeing Special Attention Service Bulletin 737–53–1204, dated June 19, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 16, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19143 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21873; Airspace Docket No. 05–ACE–27]

Modification of Legal Description of the Class D and Class E Airspace; Salina Municipal Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which modifies the legal description for Class D and Class E airspace at Salina Municipal Airport, KS.

EFFECTIVE DATE: 0901 UTC, October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64276; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 29, 2005 (70 FR 43742). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 27, 2005. No adverse comments were received, and this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on September 8, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–19202 Filed 9–26–05; 8:45 am]

BILLING CODE 4927–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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

Modification of Legal Description of Class E Airspace; Lincoln, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which modifies the legal description for Class E Airspace; Lincoln, NE.

EFFECTIVE DATE: 0901 UTC, October 27, 2005.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 29, 2005 (70 FR 43741). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 27, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas city, MO, on September 8, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–19200 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21872; Airspace Docket No. 05–ACE–26]

Modification of Class E Airspace; Norfolk, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

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

EFFECTIVE DATE: 0901 UTC, October 27, 2005.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 29, 2005 (70 FR 43745). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 27, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Dated: Issued in Kansas City, MO, on September 8, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–19201 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21874; Airspace Docket No. 05–ACE–28]

Modification of Class E Airspace; Dodge City Regional Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Dodge City Regional Airport, KS.

EFFECTIVE DATE: 0901 UTC, October 27, 2005.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 29, 2005 (70 FR 43744). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 27, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on September 8, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Service Operations.

[FR Doc. 05–19203 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2005–22397; Airspace Docket No. 05–ASO–9]

RIN 2120–AA66

Modification of Restricted Area R–3004; Fort Gordon, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Restricted Area R–3004, Fort Gordon, GA, by vertically subdividing the airspace into two separate areas; R–3004A (surface to 7,000 feet Mean Sea Level (MSL)) and R–3004B (7,001 feet MSL to 16,000 feet MSL). This modification will not alter the existing lateral boundary or current upper limit of restricted airspace, or change the use of the area. The FAA is taking this action to allow for more efficient real-time utilization of the airspace during periods when only the lower segment of the restricted area is needed for military operations.

DATES: Effective 0901 UTC, December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

In its current configuration, R–3004 extends from the surface to 16,000 feet MSL. However, a number of military missions conducted in the area only require restricted airspace up to 7,000 feet MSL. This results in the airspace above 7,000 feet MSL being unnecessarily restricted during periods when only low altitude activities are in progress. Subdividing the restricted area at 7,000 feet MSL will facilitate the more efficient use of airspace by releasing the altitudes above 7,000 feet MSL during those periods when only the lower altitude stratum is needed for military operations.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by subdividing R–3004 into two separate areas, designated R–3004A and R–3004B. This subdivision will not change the overall external boundaries, designated altitudes, time of designation, or activities conducted within the restricted area.

This action will facilitate the release of restricted airspace that is not needed for military operations, and will enhance the efficient use of the navigable airspace. Therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

Environmental Review

This action is a minor change to the technical description of special use airspace to internally subdivide an existing restricted area. This action does not alter the overall dimensions, altitudes, or time of designation of R–3004. Therefore, this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311d.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited Areas, Restricted Areas.

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.30 [Amended]

■ 2. Section 73.30 is amended as follows:

* * * * *

R–3004 Fort Gordon, GA [Revoke]

* * * * *

R–3004A Fort Gordon, GA [Added]

Boundaries. Beginning at lat. 33°21′54″ N., long. 82°12″14″ W.; to lat. 33°19′44″ N., long. 82°12′14″ W.; to lat. 33°16′21″ N., long. 82°17′59″W.; to lat. 33°17′30″ N., long. 82°22′59″ W.; to lat. 33°21′16″ N., long. 82°18′46″ W.; to lat. 33°22′16″ N., long. 82°16′59″ W.; to the point of beginning.

Designated altitudes. Surface to 7,000 feet MSL.

Time of designation. By NOTAM 24 hours in advance.

Controlling agency. FAA, Atlanta ARTCC.

Using agency. U.S. Army, Commanding Officer, Fort Gordon, GA.

Aircraft activity is limited to the following terms and conditions:

1. Aircraft activities may not be conducted on weekends, National holidays, or the entire week of the Masters Golf Tournament.

2. Aircraft activities may only be conducted from the surface to 12,000 feet AGL.

3. Weather conditions required for aircraft activities are 5 miles visibility and with prevailing clouds or obscuring phenomena no greater than five-tenths coverage of the sky and bases no lower than 3,000 feet AGL.

R–3004B Fort Gordon, GA [Added]

Boundaries. Beginning at lat. 33°21′″54″ N., long. 82°12′14″ W.; to lat. 33°19′44″ N., long. 82°12′14″ W.; to lat. 33°16′21″ N., long. 82°17′59″ W.; to lat. 33°17′30″ N., long. 82°22′59″ W.; to lat. 33°21′16″ N., long. 82°18′46″ W.; to lat. 33°22′16″ N., long. 82°16′59″ W.; to the point of beginning.

Designated altitudes. 7,001 feet MSL to 16,000 feet MSL.

Time of designation. By NOTAM 24 hours in advance

Controlling agency. FAA, Atlanta ARTCC.

Using agency. U.S. Army, Commanding Officer, Fort Gordon, GA.

Aircraft activity is limited to the following terms and conditions:

1. Aircraft activities may not be conducted on weekends, National holidays, or the entire week of the Masters Golf Tournament.

2. Aircraft activities may only be conducted from the surface to 12,000 feet AGL.

3. Weather conditions required for aircraft activities are 5 miles visibility and with prevailing clouds or obscuring phenomena no greater than five-tenths coverage of the sky and bases no lower than 3,000 feet AGL.

* * * * *

Issued in Washington, DC, on September 15, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–19204 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–076]

RIN 1625–AA08

Special Local Regulations for Marine Events; Sunset Lake, Wildwood Crest, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation during the ''Sunset Lake Hydrofest'', a marine event to be held September 24 and 25, 2005, on the waters of Sunset Lake, Wildwood Crest, New Jersey. This special local regulation is necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in portions of Sunset Lake during the event.

DATES: This rule is effective from 8:30 a.m. on September 24, 2005 to 5:30 p.m. on September 25, 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 CGD05–05–076 and are available for inspection of copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 27, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations for Marine Events; Sunset Lake, Wildwood Crest, NJ'' in the **Federal Register** (70 FR 43345). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

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 its effective date would be contrary to public interest, since immediate action is needed to protect event participants, spectator craft and other vessels transiting the event area from the dangers of high-speed power boat racing. Additionally, the parameters of the safety zone are limited to the race area, and the length of time this zone will be effective is limited to the times and dates of the event.

Background and Purpose

On September 24 and 25, 2005, the Sunset Lake Hydrofest Association will sponsor the ''Sunset Lake Hydrofest'', on the waters of Sunset Lake near Wildwood Crest, New Jersey. The event will consist of approximately 100 inboard hydroplanes, Jersey Speed Skiffs and flat-bottom ski boats racing in heats counter-clockwise around an oval racecourse. A fleet of approximately 100 spectator vessels is expected to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Comments and Changes

No comments were received in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of Sunset Lake. Since no comments were received, no changes to this regulation were made.

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.

Although this regulation prevents traffic from transiting a portion of Sunset Lake during the event, the effect of this regulation would not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers, so mariners can adjust their plans accordingly. Additionally,

the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic would be able to transit Sunset Lake by navigating around the regulated area.

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 affects the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Sunset Lake during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a limited period. Vessel traffic could pass safely around the regulated area. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 the address listed under **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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 will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We 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)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary *§ 100.35–T05–076* to read as follows:

§ 100.35–T05–076 Sunset Lake, Wildwood Crest, NJ.

(a) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Sunset Lake Hydrofest under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Delaware Bay.

(4) *Regulated area* includes all waters of Sunset Lake, New Jersey, from shoreline to shoreline, south of latitude 38°58′32″ N. All coordinates reference Datum: NAD 1983.

(b) *Special local regulations:* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(c) *Enforcement period.* This section will be enforced from 8:30 a.m. to 5:30 p.m. on September 24 and 25, 2005.

Dated: September 9, 2005.

S. Ratti,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 05–19211 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–075]

RIN 1625–AA08

Special Local Regulations for Marine Events; Choptank River, Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the ''Cambridge Offshore Challenge'', a marine event to be held on the waters of the Choptank River at Cambridge, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Choptank River during the event.

DATES: This rule is effective from 9:30 a.m. to 5:30 p.m. on September 25, 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 CGD05–05–075 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 27, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations for Marine Events; Choptank River, Cambridge, MD'' in the **Federal Register** (70 FR 43347). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

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 its effective date would be contrary to public interest, since immediate action is needed to protect event participants, spectator craft and other vessels transiting the event area from the dangers of high-speed power boats racing. Additionally, the parameters of the safety zone are limited to the race area, and the length of time this zone will be effective is limited to the times and dates of the event.

Background and Purpose

On September 25, 2005, the Chesapeake Bay Powerboat Association will sponsor the ''2005 Cambridge Offshore Challenge'', on the waters of the Choptank River at Cambridge, Maryland. The event will consist of approximately 40 offshore powerboats conducting high-speed competitive races between the Route 50 bridge and Oystershell Point, MD. A fleet of approximately 250 spectator vessels is expected to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Comments and Changes

No comments were received in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Choptank River. Since no comments were received, no changes to this regulation were made.

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.

Although this regulation will prevent traffic from transiting a portion of the Choptank River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect

and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Choptank River during the event.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 the address listed under **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 100.35–T05–075 to read as follows:

§ 100.35–T05–075 Choptank River, Cambridge, MD.

(a) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the 2005 Cambridge Offshore Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(4) *Regulated area* includes all waters of the Choptank River, from shoreline to shoreline, bounded to the west by the Route 50 Bridge and bounded to the east by a line drawn along longitude 076° W, between Goose Point, MD and Oystershell Point, MD. All coordinates reference Datum: NAD 1983.

(b) *Special local regulations:* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(c) *Enforcement period.* This section will be enforced from 9:30 a.m. to 5:30 p.m. on September 25, 2005.

Dated: September 9, 2005.

S. Ratti,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 05–19210 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–097]

RIN 1625–AA08

Special Local Regulations for Marine Events; Delaware River, Philadelphia, PA and Camden, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: On August 18, 2005, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** requesting public comments regarding establishment of temporary special local regulations for ''The Liberty Grand Prix'', a power boat race to be held on the waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ. On September 13, 2005, the Coast Guard learned that this marine event was proposed to be conducted at a different date and time than previously published in the NPRM. This rule changes the dates of the temporary regulated area. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic between the Walt Whitman and Benjamin Franklin bridges in the Delaware River during the power boat race.

DATES: This rule is effective from 11:30 a.m. to 5:30 p.m. on October 8 and 9, 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 CGD05–05–097 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis M. Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 18, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations for Marine Events; Delaware River, Philadelphia, PA and Camden, NJ'' in the **Federal Register** (70 FR 48505). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

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 its effective date would be contrary to public interest, since immediate action is needed to protect event participants, spectator craft and other vessels transiting the event area from the dangers of high-speed power boat racing. However advance notifications will be made to affected waterway users via marine information broadcasts, local radio stations and area newspapers.

Background and Purpose

On October 8 and 9, 2005, the Offshore Performance Association, Inc. will sponsor the ''The Liberty Grand Prix'', on the waters of the Delaware River. The event will consist of approximately 40 V-hull and twin-hull inboard hydroplanes racing in heats counter-clockwise around an oval race course. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Comments and Changes

No comments were received in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**.

On September 13, 2005, the Coast Guard learned that this power boat race was proposed to be conducted at a different date and time than previously announced in the notice of proposed rulemaking (NPRM) that was published on August 18, 2005. This temporary rule will change both the dates and times of

the special local regulations. The temporary special local regulations will be enforced from 11:30 a.m. until 5:30 p.m. on October 8 and 9, 2005.

The Coast Guard has taken steps to notify local waterway users of the change in dates and times so they may adjust their plans accordingly. Vessel traffic will be allowed to transit the regulated area between on the water events, when the Patrol Commander determines it is safe to do so. The Patrol Commander may intermittently authorize general navigation to pass through the regulated area. Notice of these opportunities will be given via marine safety radio broadcast on VHF–FM marine band radio, channel 16 (156.8 MHz) and channel 22 (157.1 MHz).

Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Delaware River.

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 temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a segment of the Delaware River adjacent to Philadelphia, PA and Camden, NJ during the event, the impact of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this section of the Delaware River during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 11:30 a.m. to 5:30 p.m. on October 8 and 9, 2005. Although the regulated area will apply to the entire width of the Delaware River between the Walt Whitman and Benjamin Franklin bridges, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area during the event, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 the address listed under **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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 M16475.1D, 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)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under those sections. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 100.35–T05–097 to read as follows:

§ 100.35–T05–097 Delaware River, Philadelphia, PA, Camden, NJ.

(a) *Regulated area.* The regulated area is established for the waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Regulations:* (1) No person or vessel may enter or remain in the regulated area unless participating in the event or authorized by the Patrol Commander. The Patrol Commander may intermittently authorize general navigation to pass through the regulated area. Notice of these opportunities will be given via marine safety radio broadcast on VHF–FM marine band radio, channel 16 (156.8 MHz) and channel 22 (157.1 MHz).

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be effective from 11:30 a.m. to 5:30 p.m. on October 8 and 9, 2005.

Dated: September 15, 2005.

S. Ratti,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 05–19209 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–088]

Drawbridge Operation Regulations: Fort Point Channel, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Northern Avenue Bridge, mile 0.1, across Fort Point Channel at Boston, Massachusetts. A one-hour advance notice will be required for bridge openings from 7 a.m. to 11 p.m., September 15, 2005 through October 31, 2005, and from 7 a.m. to 3 p.m., November 1, 2005 through November 14, 2005. This temporary deviation is necessary to facilitate bridge maintenance repairs.

DATES: This deviation is effective from September 15, 2005 through November 14, 2005.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Northern Avenue Bridge has a vertical clearance in the closed position of 7 feet at mean high water and 16 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.599.

The owner of the bridge, the City of Boston, requested a temporary deviation from the drawbridge operation regulations to facilitate replacement of the submarine power supply cable at the bridge. The old power supply cable failed and until it can be replaced the bridge must temporarily operate using an electrical generator.

Additional time is necessary for bridge openings as a result of the use of the temporary generator in order to start and adjust the generator voltage prior to opening the bridge. A one-hour advance notice is necessary to allow sufficient

time for the bridge operator to open the bridge after a request is given.

Under this temporary deviation the Northern Avenue Bridge shall open on signal after a one-hour advance notice is given from 7 a.m. to 11 p.m., September 15, 2005 through October 31, 2005, and from 7 a.m. to 3 p.m., November 1, 2005 through November 14, 2005. From 11 p.m. to 7 a.m., September 15, 2005 through October 31, 2005, the bridge shall open on signal after a two-hour notice is given. From 3 p.m. to 7 a.m., November 1, 2005 through November 14, 2005, the bridge shall open on signal after a twenty-four hour notice is given.

Mariners may request bridge openings by calling the bridge operator on channel 13 or by telephone at (617) 635–7520.

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

Dated: September 15, 2005.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 05–19212 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–126–1–7691; FRL–7974–7]

Approval and Promulgation of Implementation Plans; Texas; Transportation Control Measures in the Dallas/Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the Texas Ozone State Implementation Plan (SIP). This approval incorporates the Transportation Control Measures, submitted by the Governor of Texas on April 25, 2000 (as substituted by the Texas Commission on Environmental Quality on January 14, 2004), into the SIP for the Dallas/Fort Worth Ozone Nonattainment Area. The inclusion of Transportation Control Measures in the SIP fulfills one requirement found under Section 182(c)(5) of the Federal Clean Air Act which provides that serious ozone nonattainment areas incorporate such measures into the state air quality plan. This action also fulfills of EPA's obligations under a Federal district court Consent Decree to act on these measures (70 FR 32326).

DATES: This rule is effective on October 27, 2005.

ADDRESSES: Copies of the documents relevant to this action are in the official file which is available at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

Copies of any State submittals are also available for public inspection at the State Air Agency listed below during official business hours by appointment:

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

FOR FURTHER INFORMATION CONTACT: Peggy Wade, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, telephone (214) 665–7247; fax number (214) 665–7263; e-mail address *Wade.Peggy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document ''we,'' ''us,'' and ''our'' refers to EPA.

Outline

I. What Action Is EPA Taking?
II. What is the Background for This Action?
III. What Comments Were Received During the Public Comment Period?
IV. Final Action
V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

The EPA is approving the Transportation Control Measures (TCM) for the Dallas-Fort Worth 1-hour ozone nonattainment area (*i.e.*, Collin, Dallas, Denton and Tarrant counties) submitted by Texas on April 25, 2000. In addition, we note that certain changes to the original TCMs occurred as they were substituted in January 2004 in accordance with the Texas TCM substitution rule (30 TAC 114.270; see 67 FR 72379) and the EPA guidance document Policy Guidance on the Adoption and Use of SIP TCM Substitution Mechanisms in SIPs (EPA Office of Transportation and Air Quality, April 7, 2004). The Texas TCM substitution rule provides a mechanism in Texas to allow an area to substitute TCMs without the requirement of a SIP revision.

II. What Is the Background for This Action?

A SIP revision for the Dallas—Fort Worth (DFW) 1-hour ozone nonattainment area was submitted to EPA by the State of Texas on April 25, 2000. This SIP revision contained many control measures designed to improve the air quality in the DFW area. EPA has since approved, in separate **Federal Register** notices, a number of aspects of this SIP submittal. EPA proposed approval of the TCMs in this SIP, which are located in Appendix G, on January 18, 2001 (66 FR 4756). Our proposed approval of these original TCMs did not remove or revise any previously approved TCMs in the SIP. The total emission reductions creditable to the TCMs contained in this appendix are 4.73 tons per day (tpd) of nitrogen oxide (NO_X) emissions and 2.95 tpd of volatile organic compounds (VOC) emissions in the 4-county nonattainment area. These TCMs are scheduled to be implemented no later than July, 2007. These TCMs strengthen the SIP and comply with the requirements of section 110(l) of the Clean Air Act. Specific details on these TCMs, and the amount of reductions attributable to each measure, are available in the Technical Support Document associated with this action.

The EPA transportation conformity regulations define TCMs as any measure specifically identified and committed to in the SIP that is either one of the types listed in the Clean Air Act (CAA) at Section 108(f)(1)(A), or any other measure with the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. According to the transportation conformity regulations, Metropolitan Planning Organizations (MPO), such as the North Central Texas Council of Governments (NCTCOG), must demonstrate timely implementation of TCMs by incorporation into the area's Metropolitan Transportation Plan (MTP) and Transportation Improvement Program (TIP) with appropriate funding dedicated to each TCM (40 CFR 93.113).

In some cases, the MPO might find itself unable to demonstrate that TCMs are meeting the timely implementation criteria because obstacles to

implementation are impossible to overcome. In the August 15, 1997 transportation conformity rule (62 FR 43779, see p. 43810), EPA committed to issuing guidance on how an area may substitute TCMs without the requirement for a SIP revision. EPA believes that such a substitution mechanism is possible if states explicitly incorporate such a policy containing replicable procedures into the SIP and we have since issued guidance to that effect (Policy Guidance on the Adoption and Use of SIP TCM Substitution Mechanisms in SIPs, EPA Office of Transportation and Air Quality, April 7, 2004). The State of Texas has developed a TCM substitution policy (30 TAC 114.270) and submitted it to EPA as a SIP revision on May 17, 2000. EPA approved this policy as a revision to the Texas SIP on December 5, 2002 (67 FR 72379). Among the requirements of this policy are that the substituted measures provide equal or greater emission reductions than those being eliminated. It also requires that the substituted measures, in accordance with section 110(l) of the Clean Air Act, do not interfere with any applicable requirement for reasonable further progress or timely attainment of any NAAQS. The policy creates a replicable process whereby a TCM working group recommends potential substitutions to TCEQ and, following a public hearing and EPA review and concurrence, TCEQ approves the substitute TCMs.

Pursuant to 30 TAC 114.270, on September 19, 2003, the NCTCOG convened an interagency working group of the transportation partners to review proposed TCMs to be used as substitute measures for certain TCMs contained in Appendix G of the April 2000 SIP which were no longer feasible to implement. Substitution of TCMs was needed because many of the original TCMs were impossible to implement due to design concept, scope or funding issues, or were inadvertently given double-credit in the original SIP (*e.g.*, one measure was counted as a reduction in two separate categories), or the scheduled implementation date had slipped beyond the July 2007 commitment in the SIP. By letter dated November 20, 2003, after appropriate public notice and hearing, EPA concurred on the substituted measures and they were subsequently adopted by the TCEQ on January 14, 2004. The substituted measures fall into the categories of intersection improvements, bicycle and pedestrian projects, high-occupancy-vehicle facilities, rail, grade separations, park-and-ride facilities, and van pools. As a whole, they provide additional emission reductions of 59.4 pounds-per-day of NO_X and 372.8 pounds-per-day of VOC as compared to the original TCMs.

III. What Comments Were Received During the Public Comment Period?

EPA proposed approval of this SIP, including the TCMs and other measures, on January 18, 2001. The comment period closed on March 19, 2001, and we did not receive any comments on the original TCMs included in the SIP. The TCEQ held another comment period culminating in a public hearing regarding the appropriateness of the proposed measures to be used as TCM substitutions from September 24, 2003, to October 29, 2003. No comments were received.

IV. Final Action

The EPA is approving the TCMs found in the SIP for the Dallas-Fort Worth 1-hour ozone nonattainment area submitted by Texas on April 25, 2000. These TCMs were substituted in January, 2004, in accordance with the Texas TCM substitution rule.

V. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.'' This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it approves a state program.

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 19, 2005.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. In § 52.2270, the second table in paragraph (e) entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding one new entry to the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

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

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
*	*	*	*	*
Dallas—Fort Worth SIP, Appendix G; Transportation Control Measures in the Dallas/Fort Worth Ozone Nonattainment Area.	Dallas/Fort Worth Ozone Nonattainment Area.	01/14/2004	09/27/2005 [Insert FR page number where document begins].	

[FR Doc. 05–19257 Filed 9–26–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AU14

2005–2006 Refuge-Specific Hunting and Sport Fishing Regulations; Corrections

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correcting amendments.

SUMMARY: The Fish and Wildlife Service published a document in the **Federal Register** on September 13, 2005 (70 FR 54146), amending 50 CFR part 32. This document related to the addition of refuges and wetland management districts to the list of areas open for hunting and/or sport fishing programs and increased the activities available at other refuges. We also developed pertinent refuge-specific regulations for those activities and amended certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2005–2006 season. This document corrects the final regulations.

DATES: Effective September 27, 2005.

FOR FURTHER INFORMATION CONTACT: Leslie Marler, (703) 358–2397.

SUPPLEMENTARY INFORMATION: Most corrections are in the instructions to the typesetters for adding or revising paragraphs in the regulatory text section. Two corrections are for spelling, and one correction is for section number.

List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

■ Accordingly, 50 CFR part 32 is corrected by making the following correcting amendments:

PART 32—HUNTING AND FISHING

■ 1. The authority citation for part 32 continues to read:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

§ 32.37 [Amended]

■ 2. Amending § 32.37 Louisiana by:

■ a. Revising in instruction 15.c. the spelling of ''Boque Chitto National Wildlife Refuge'' to read ''Bogue Chitto National Wildlife Refuge;'';

■ b. Revising instruction 15.e. to read as follows: ''Revising paragraphs A.1. and A.8., adding paragraphs A.21. through A.25., revising paragraphs B.1. and C.1., redesignating paragraphs C.3. through C.8. as paragraphs C.4. through C.9. respectively, adding a new paragraph C.3., revising newly redesignated paragraphs C.4. and C.5., and adding paragraphs C.10., D.10., and D.11. of Cat Island National Wildlife Refuge;'';

■ c. Revising the alphabetical listing of ''Boque Chitto National Wildlife Refuge'' to read ''Bogue Chitto National Wildlife Refuge''; and

■ d. Revising paragraph designation ''C.9.'' to read ''C.10.'' of Cat Island National Wildlife Refuge.

§ 32.40 [Amended]

■ 3. Amending § 32.40 Massachusetts instruction 18.b. to read as follows: ''Revising Great Meadows National Wildlife Refuge; and''.

■ 4. Amending § 32.44 Missouri by redesignating paragraphs C.5. through C.8. as C.6. through C.9. and adding a new C.5. to Mingo National Wildlife Refuge to read as follows:

§ 32.44 Missouri.

* * * * *

Mingo National Wildlife Refuge

* * * * *

C. * * *

5. We allow spring turkey hunting. We only allow shotguns with approved nontoxic shot (see § 32.2(k)).

* * * * *

§ 32.50 [Amended]

■ 5. Amending § 32.50 New Mexico by revising instruction 25 to read as follows: ''Amend § 32.50 New Mexico by revising paragraph A.2. and adding paragraph B.3. of Bosque del Apache National Wildlife Refuge to read as follows:''.

§ 32.52 [Amended]

■ 6. Amending § 32.52 North Carolina by revising instruction 27.a. to read as follows: ''Revising paragraph A.5., adding paragraphs A.6. and A.7., revising paragraphs B.1. through B.4., and C.1. through C.4., and removing paragraph C.5. of Alligator River National Wildlife Refuge; and''.

§ 32.56 [Amended]

■ 7. Amend § 32.56 Oregon by:
■ a. Revising instruction 30.a. to read as follows: ''Adding paragraphs A.9. and B.6. of Cold Springs National Wildlife Refuge;'';
■ b. Revising instruction 30.c. to read as follows: ''Adding paragraph A.8. and revising paragraph B.1. of McKay Creek National Wildlife Refuge; and''; and
■ c. Revising paragraph designation B.3. to read B.6. of Cold Springs National Wildlife Refuge.

§ 32.62 [Amended]

■ 8. Amend § 32.62 Tennessee by:
■ a. Revising instruction 34 to read ''Amend § 32.62 Tennessee by:''; and
■ b. Revising the section heading ''§ 32.63 Tennessee.'' to read ''§ 32.62 Tennessee.''.

§ 32.63 [Amended]

■ 9. Amend § 32.63 Texas instruction 35.d. by revising the spelling of ''Laguna Atascosca National Wildlife Refuge;'' to read ''Laguna Atascosa National Wildlife Refuge;''.

§ 32.66 [Amended]

■ 10. Amend § 32.66 Virginia by amending instruction 37.a. to read: ''Adding paragraph C.2.vi. of Chincoteague National Wildlife Refuge;''.

Dated: September 20, 2005.

Leslie A. Marler,

National Wildlife Refuge System Federal Register Liaison.

[FR Doc. 05–19073 Filed 9–26–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 092105D]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 Atka mackerel total allowable catch (TAC) in the Central Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 22, 2005, through 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 Atka mackerel TAC in the Central Aleutian District of the BSAI is 32,838 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2005 Atka mackerel TAC in the Central Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 32,788 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Atka mackerel in the Central Aleutian District of the BSAI. NMFS was unable to publish an action providing time for public comment because the most recent, relevant data only became available as of September 16, 2005.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 22, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–19272 Filed 9–22–05; 1:20 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 186
Tuesday, September 27, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Docket No. FV03–925–1 PR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Extension of Comment Period on Changing Regulatory Periods

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and extension of comment period.

SUMMARY: Notice is hereby given that the comment period on proposed changes in the regulatory periods when minimum grade, size, quality, and maturity requirements apply to southeastern California grapes under Marketing Order No. 925 (order), and to imported grapes under the table grape import regulation is extended until November 28, 2005.

DATES: Comments must be received by November 28, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: *moab.docketclerk@usda.gov*, or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue, the May 25, 2005, issue, and the July 25, 2005 issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; Telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: A proposed rule was issued on May 20, 2005, and published in the **Federal Register** on May 25, 2005 (70 FR 30001). The proposed rule would change the regulatory periods when the minimum grade, size, quality, and maturity requirements apply to southeastern California grapes under the order and to imported grapes under the table grape import regulation. A notice of extension of comment period was issued July 20, 2005, and published in the **Federal Register** on July 25, 2005 (70 FR 42513). This document extended the comment period from July 25, 2005, to September 25, 2005.

Another extension was requested on behalf of ASOEX, a trade association of Chilean fruit growers and fresh fruit exporters. In its previous request, ASOEX stated that its members represent approximately 90 percent of Chilean table grape imports to the United States. The extension was requested to provide additional time for interested persons to accumulate and analyze data regarding the proposal and to submit written comments on the proposed rule.

After reviewing the request, USDA is extending the comment period for 60 additional days or until November 28, 2005. This will provide interested persons more time to review the proposed rule, perform a more complete analysis, and submit written comments.

Accordingly, the period in which to file written comments is extended until November 28, 2005. This notice is issued pursuant to the Agricultural Marketing Agreement Act of 1937.

Authority: 7 U.S.C. 601–674.

Dated: September 23, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–19328 Filed 9–23–05; 11:31 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22527; Directorate Identifier 2004–NM–04–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 Series Airplanes; A300 B4–103 and B4–203 Airplanes; and A310–203 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 Airbus Model A300 B2 series airplanes, A300 B4–103 and B4–203 airplanes, and Model A310–203 airplanes. This proposed AD would require a one-time inspection for missing or incorrect rivets in the entire structural area affected by conversion from passenger to freight configuration, and corrective action if necessary. This proposed AD is prompted by a report of rivets missing from the passenger-to-freight converted area. We are proposing this AD to prevent structural failure of the main deck and main deck cargo door areas.

DATES: We must receive comments on this proposed AD by October 27, 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 EADS Airbus G.M.B.H., Postfach 95 01 09, 21111 Hamburg, Germany.

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–2005–22527; the directorate identifier for this docket is 2004–NM–04–AD.

FOR FURTHER INFORMATION CONTACT: David Lawson, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7327; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–22527; Directorate Identifier 2004–NM–04–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified us that an unsafe condition may exist on certain Airbus Model A300 B2 series airplanes, A300 B4–103 and B4–203 airplanes, and A310–203 airplanes. The LBA advises that rivets were reported as missing from the fuselage main deck and main deck cargo door area on one affected A300 airplane. The findings occurred during a maintenance check on an airplane that had been converted from passenger use to freighter use. This condition, if not corrected, could result in structural failure of the main deck and main deck cargo door areas.

Relevant Service Information

Airbus has issued EADS Alert Service Bulletin DA–53–073, dated June 26, 2002 (for Airbus Model A300 B2 series airplanes, and A300 B4–103 and B4–203 airplanes); and EADS Alert Service Bulletin DA–53–074, dated June 27, 2002 (for Airbus Model A310–203 airplanes). Airbus has also issued All Operator Telex (AOT) M113–02–007, dated June 21, 2002. The service bulletins describe procedures for visually inspecting for missing or incorrect rivets in the area affected by the conversion. If there are missing or incorrect rivets, the service bulletins recommend contacting the LBA's delegated agent for further instructions. The AOT describes the areas on which the inspection is required, in accordance with the riveting layouts in the service bulletins. The service bulletins also request that operators report the inspection results to the delegated agent, and the AOT requests that operators provide this report to Airbus.

The LBA mandated the service information and issued German airworthiness directive 2002–200, dated June 27, 2002, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the German Airworthiness Directive.''

Differences Between the Proposed AD and the German Airworthiness Directive

The German airworthiness directive does not include manufacturer's serial number (S/N) 184 in its list of airplane S/Ns affected by the action. This proposed AD would include S/N 184 in its applicability. S/N 184 was inadvertently excluded from the German airworthiness directive.

The German airworthiness directive lists the applicable service bulletin numbers as A300–DA53–073, and A310–DA53–074. This is an inadvertent error. The numbers are identified on the applicable service bulletins as EADS Alert Service Bulletins DA–53–073, and DA–53–074.

The German airworthiness directive directs operators to contact the LBA's delegated agent for repair instructions. This proposed AD would require you to repair those conditions using a method that we or the LBA (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the LBA approve would be acceptable for compliance with this proposed AD.

Although the German airworthiness directive specifies that operators should submit an inspection report, this proposed AD would not require those actions.

Clarification of Inspection Language

The service bulletin and the German airworthiness directive request that

operators ''visually inspect'' for missing and incorrect fasteners. This proposed AD defines this inspection as a ''general visual inspection.'' This inspection is defined in Note 1 of this proposed AD.

Costs of Compliance

This proposed AD would affect about 2 Airbus Model A300 B4–103 and B4–203 airplanes of U.S. registry. The proposed actions would take about 80 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $10,400, or $5,200 per airplane.

Currently there are no Airbus Model A310–203 airplanes of U.S. registry. However, should one of these airplanes be imported and placed on the U.S. registry, we estimate that the proposed actions would take about 80 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD would be $5,200 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2005–22527; Directorate Identifier 2004–NM–04–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by October 27, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, A300 B4–103, and B4–203 airplanes, and Model A310–203 airplanes; certificated in any category; as identified in EADS Alert Service Bulletin DA–53–073, dated June 26, 2002, and EADS Alert Service Bulletin DA–53–074, dated June 27, 2002; as applicable.

Unsafe Condition

(d) This AD was prompted by a report of rivets missing from the structural area affected by conversion from passenger to freight configuration. We are issuing this AD to prevent structural failure of the main deck and main deck cargo door areas.

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 300 flight cycles after the effective date of this AD: Do a general visual inspection for missing or incorrect rivets in the entire structural area affected by conversion from passenger to freight configuration identified in Airbus All Operator Telex M113–02–007, dated June 21, 2002. Do the inspections in accordance with the Accomplishment Instructions of EADS Alert Service Bulletin DA–53–073, dated June 26, 2002; or EADS Alert Service Bulletin DA–53–074, dated June 27, 2002; as applicable.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Corrective Action

(g) If any inspection required by paragraph (f) of this AD identifies a missing or incorrect rivet: Before further flight, repair according to a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or the Luftfahrt-Bundesamt (LBA) (or its delegated agent).

No Reporting Required

(h) Although the service bulletins referenced in this AD specify to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

(2) 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

(j) German airworthiness directive 2002–200, dated June 27, 2002, also addresses the subject of this AD.

Issued in Renton, Washington, on September 16, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19237 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22528; Directorate Identifier 2005–NM–125–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318–100 and A319–100 Series Airplanes; A320–111 Airplanes; A320–200 Series Airplanes; and A321–100 and A321–200 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A318–100 and A319–100 series airplanes; A320–111 airplanes; A320–200 series airplanes; and A321–100 and A321–200 series airplanes. This proposed AD would require a one-time inspection of the horizontal hinge pin of the 103VU electrical panel in the avionics compartment to determine if the hinge pin can move out of the hinge, and related investigative and corrective actions if necessary. This proposed AD results from a report indicating that electrical wire damage was found in the 103VU electrical panel due to contact between the hinge pin and the adjacent electrical wire harness. We are proposing this AD to prevent contact between the horizontal hinge pin and the adjacent electrical wire harness, which could result in damage to electrical wires, and consequent arcing and/or failure of associated systems.

DATES: We must receive comments on this proposed AD by October 27, 2005.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–22528; Directorate Identifier 2005–NM–125–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A318–100 and A319–100 series airplanes; A320–111 airplanes; A320–200 series airplanes; and A321–100 and A321–200 series airplanes. The DGAC advises that electrical wire damage was found in the 103VU electrical panel, which is located in the avionics compartment. Investigation revealed contact between the horizontal hinge pin and an adjacent electrical wire harness, due to migration of the hinge pin. This condition, if not corrected, could result in damage to electrical wires, and consequent arcing and/or failure of associated systems.

Relevant Service Information

Airbus has issued All Operators Telex (AOT) 25A1440, dated February 15, 2005. The AOT describes procedures for inspecting the 103VU electrical panel horizontal hinge pin to determine if the pin can move out of the hinge. If there is no hinge movement, the AOT states that no further action is required. If there is movement, the AOT states that operators should do the related investigative action of inspecting for damage to the adjacent electrical harness, and do all necessary corrective actions. The corrective actions include reworking the hinge, and repairing any damage to the electrical harness. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the AOT and issued French airworthiness directive F–2005–052 R1, dated April 13, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

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

Clarification of Inspection Language

The service bulletin and the French airworthiness directive request that operators ''inspect'' for hinge pin movement. This proposed AD defines that inspection as a ''general visual inspection.'' This inspection is defined in Note 1 of this AD.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	1	$65	None	$65	696	$45,240

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2005–22528; Directorate Identifier 2005–NM–125–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 27, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–111 and –112; A319–111, –112, –113, –114, –115, –131, –132, and –133; A320–111, –211, –212, –214, –231, –232, and –233; and A321–111, –112, –131, –211 and –231 airplanes; certificated in any category; serial numbers (S/Ns) 1 through 2396 inclusive, except S/Ns 2104, 2143, 2248, 2270, 2347, 2366, 2372, 2376, 2384, 2386, 2388, 2390, 2391, 2393, and 2395.

Unsafe Condition

(d) This AD results from a report indicating that electrical wire damage was found in the 103VU electrical panel due to contact between the hinge pin and the adjacent electrical wire harness. The FAA is issuing this AD to prevent contact between the horizontal hinge pin and the adjacent electrical wire harness, which could result in damage to electrical wires, and consequent arcing and/or failure of associated 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.

Inspections and Corrective Actions

(f) Within 600 flight hours after the effective date of this AD, do a general visual inspection of the horizontal hinge pin of the 103VU electrical panel in the avionics compartment to determine if the pin can move out of the hinge, and do any applicable related investigative and corrective actions, including repair of any damaged electrical wires, before further flight. Do all the actions in accordance with Airbus All Operators Telex 25A1440, dated February 15, 2005.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

No Reporting

(g) Although All Operators Telex 25A1440, dated February 15, 2005, specifies that operators should send the results of inspections to the manufacturer, that action is not required by this AD.

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 directive F–2005–052 R1, dated April 13, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on September 16, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19232 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22529; Directorate Identifier 2005–NM–099–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 767–200, –300, and –300F series airplanes. The existing AD currently requires repetitive inspections of the lubrication passage and link assembly joint in the inboard and outboard flaps of the trailing edge for discrepancies, and corrective action if necessary. This proposed AD would require new inspections for cracking or severe wear of the bearings of the link assembly, and corrective actions if necessary. This proposed AD would also require inspecting any link assembly not previously inspected for damage and replacing it with a new assembly if necessary. This proposed AD also ends the existing repetitive inspections for certain airplanes, and extends the repetitive interval for the existing repetitive inspections and the compliance time for the corrective action on certain other airplanes. This proposed AD also provides an optional terminating action that would end the repetitive inspections. This proposed AD results from additional reports indicating fractured bearings of the link assembly joint in the inboard and outboard flaps of the trailing edge. We are proposing this AD to prevent failure of the bearings in the link assembly joint, which could result in separation of the inboard or outboard flap and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by November 14, 2005.

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

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

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

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number ''Docket No. FAA–2005–22529; Directorate Identifier 2005–NM–099–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

On January 16, 2002, we issued AD 2002–01–15, amendment 39–12609 (67 FR 4328, January 30, 2002), for certain Boeing Model 767–200, –300, and –300F series airplanes. That AD requires repetitive inspections of the lubrication passage and link assembly joint in the inboard and outboard flaps of the trailing edge for discrepancies, and corrective action if necessary. That AD resulted from reports of fractured bearings and blocked lubrication passages of the link assembly joint in the inboard and outboard flaps of the trailing edge. We issued that AD to prevent failure of the bearings in the link assembly joint, which could result in separation of the outboard flap and consequent loss of control of the airplane.

Actions Since Existing AD Was Issued

The preamble to AD 2002–01–15 explains that we consider the requirements ''interim action'' and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Since we issued AD 2002–01–15, we have received reports of numerous additional incidents of fractured bearings of the link assembly joint in the inboard and outboard flaps of the trailing edge. In several of these additional incidents, the bearings were properly lubricated. Metallurgical examination of fractured bearings indicated environmentally assisted cracking.

These additional incidents support the data referenced in the **SUPPLEMENTARY INFORMATION** section of AD 2002–01–15 that indicate that bearings of the link assembly joint may fail even when they are properly lubricated. However, paragraph (b)(1) of

AD 2002–01–15 allows repetitive inspections to continue indefinitely (*i.e.*, without accomplishment of the interim corrective action referenced in paragraph (b)(3) of AD 2002–01–15) if the lubrication passage is not blocked and no fractured bearing or loose or damaged joint is found. Based on the continued reports of bearing failures, we have determined that accomplishment of the corrective action specified in the existing AD (which involves removing the link assembly, inspecting it for damage, and replacing it with a new assembly if damage is found) would ensure the continued operating safety of the affected airplane fleet better than continued repetitive inspections. Accomplishing the interim corrective action eliminates the need to repeat the inspections for discrepancies of the lubrication passage and link assembly joint.

However, based on the results of extensive testing performed by the manufacturer, we have determined that it is appropriate to extend, from 30 days to 60 days, the interval for the repetitive inspections for discrepancies of the lubrication passage and link assembly joint for certain airplanes, and to end these repetitive inspections for certain other airplanes. Also based on the results of the extensive testing, we have determined that it is appropriate to extend the compliance time for doing the corrective action (as specified in Part 2 of the referenced service bulletin) from 6 months to 24 months after the initial inspection. Accordingly, we have revised paragraphs (f) and (g) of this proposed AD (which comprise the restatement of the requirements of paragraphs (a) and (b) of AD 2002–01–15).

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–27A0167, Revision 2, dated October 7, 2004. (AD 2002–01–15 refers to the original issue of that service bulletin, dated December 7, 2000, as the appropriate source of service information for the actions required by that AD.) The procedures described in Part 1, Lubrication Passage and Joint Inspection; and Part 2, Link Removal, Disassembly, Inspection, and Repair; are similar to those described in the original issue of the service bulletin, except that Revision 2 of the service bulletin specifies that the inspection of the lubrication passage and joints is a detailed visual inspection. (The original issue of the service bulletin did not specify the type of inspection.)

Revision 2 of the service bulletin includes a new Part 3, Link Removal and Bearing Inspection. Part 3 describes procedures for repetitively removing the link assembly, visually inspecting the bearing ball for cracks, and inspecting the outer race of the bearing for severe wear. If no crack or evidence of severe wear is found, the service bulletin specifies that the link may be reinstalled. If any crack or excessive radial play/severe wear is found, the service bulletin says to do Part 2 of the service bulletin before further flight.

Accomplishing the actions specified in Boeing Alert Service Bulletin 767–27A0167, Revision 2, is intended to adequately address the unsafe condition.

We have also reviewed Boeing Service Bulletin 767–27–0196, dated April 21, 2005, which describes procedures for replacing the existing link assemblies of the trailing edge flaps with new, improved or modified assemblies that contain new bearings that use a bearing ball of a different material. These new bearings are not subject to environmentally induced cracking. Doing this replacement eliminates the need for the repetitive removal and inspections of the bearing ball for cracks and for severe wear of the outer race of the bearing.

FAA's Determination and Requirements of the Proposed AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design that may be registered in the U.S. at some time in the future. We are proposing to supersede AD 2002–01–15. For certain airplanes, this proposed AD would continue to retain the requirements of the existing AD, and would extend the repetitive interval for the existing inspections and the compliance time for the corrective action. This proposed AD would also require accomplishing the actions specified in Boeing Alert Service Bulletin 767–27A0167, Revision 2, described previously, except as discussed under ''Differences Between the Proposed AD and Boeing Service Bulletin 767–27A0167, Revision 2.'' This proposed AD would also provide for doing Boeing Service Bulletin 767–27–0196 as an optional terminating action for the new repetitive inspections.

Clarification of Requirements of AD 2002–01–15

As stated previously, Boeing Alert Service Bulletin 767–27A0167, Revision 2, specifies detailed visual inspections of the lubrication passage and joints for discrepancies. The original issue of that service bulletin did not specify the type of inspection that was needed, so, in AD 2002–01–15, we identify these inspections as general visual inspections, and include a definition of ''general visual inspection.'' As also stated previously, the procedures described in Part 1, Lubrication Passage and Joint Inspection, of Revision 2 of the service bulletin are similar to those described in the original issue of the service bulletin, except for the change in terminology. Therefore, for clarification, we have revised the inspection requirement restated in paragraph (f) of this proposed AD to specify a detailed inspection. Because the definition of this type of inspection is included in the service bulletin, it is not necessary to include the definition in this proposed AD.

Differences Between the Proposed AD and Boeing Service Bulletin 767–27A0167, Revision 2

For airplanes on which Part 2 of Boeing Service Bulletin 767–27A0167 (any revision) has not been done, Boeing Alert Service Bulletin 767–27A0167, Revision 2, specifies a compliance time of 90 days after October 7, 2004 (the release date of Revision 2 of that service bulletin) for doing Part 2 of the service bulletin. However, for these airplanes, if the lubrication passage has not been found blocked and no fractured bearing or loose or damaged joint has been found during any inspection required by paragraph (f) of this proposed AD, this proposed AD requires doing Part 2 within 24 months after the most recent inspection required by paragraph (g)(1) of this AD. If the lubrication passage has been found blocked, but no fractured bearing or loose or damaged joint has been found, this proposed AD requires doing Part 2 within 24 months after the initial inspection required by paragraph (f) of this proposed AD.

Part 3 of Boeing Alert Service Bulletin 767–27A0167, Revision 2, specifies to ''visually inspect the bearing ball for cracks and the outer race for wear.'' We find that the procedures for this inspection constitute a detailed inspection. Therefore, paragraph (i) of this proposed AD would require a detailed inspection for cracking of the bearing ball and for evidence of severe wear of the outer race of the bearing.

The Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0167, Revision 2, specify submitting a report of any damaged, cracked, or fractured bearings or joint pins, this proposed AD would not require that action. We do not need this information from operators.

Costs of Compliance

There are about 855 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of $65 per work hour.

ESTIMATED COSTS

Action	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Part 1 of Boeing Service Bulletin 767–27A0167 (required by AD 2002–01–15*).	6	$390*	332*	$129,480*.
Part 2 of Boeing Service Bulletin 767–27A0167 (new proposed action**).	17	$1,105	Up to 332**	Up to $366,860**.
Part 3 of Boeing Service Bulletin 767–27A0167 (new proposed action).	8	$520, per inspection cycle	371	$192,920, per inspection cycle.

* Repetitive Part 1 inspections are required only on condition, and only until Part 2 of Boeing Service Bulletin 767–27A0167 has been done.
** Applies to airplanes on which Part 2 has not been previously accomplished.

The optional terminating action provided in this proposed AD, if accomplished, would take about 23 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $3,885 per airplane. Based on these figures, the estimated cost of the optional terminating action specified in this proposed AD is $5,380 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–12609 (67 FR 4328, January 30, 2002) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–22529; Directorate Identifier 2005–NM–099–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 14, 2005.

Affected ADs

(b) This AD supersedes AD 2002–01–15.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes; certificated in any category; identified in Boeing Alert Service Bulletin 767–27A0167, Revision 2, dated October 7, 2004.

Unsafe Condition

(d) This AD results from additional reports indicating fractured bearings of the link assembly joint in the inboard and outboard flaps of the trailing edge. We are issuing this AD to prevent failure of the bearings in the link assembly joint, which could result in separation of the inboard and outboard flap and consequent loss of control of the airplane.

Compliance

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

Requirements of AD 2002–01–15

Initial Inspection

(f) For airplanes having line numbers 1 through 819 inclusive, on which Part 2 of Boeing Alert Service Bulletin 767–27A0167 has not been done: Within 90 days after February 14, 2002 (the effective date of AD 2002–01–15), or within 36 months after date of manufacture of the airplane, whichever is later, do detailed inspections of the lubrication passage and link assembly joint in the inboard and outboard flaps of the trailing edge for discrepancies (e.g., lubrication passage blocked, fractured bearing, loose or damaged joint); per Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0167, dated December 7, 2000; or Revision 2, dated October 7, 2004. After the effective date of this AD, only Revision 2 of the service bulletin may be used.

Repetitive Inspections/Corrective Action

(g) For airplanes having line numbers 1 through 819 inclusive, on which Part 2 of Boeing Alert Service Bulletin 767–27A0167 has not been done: Do the actions required by paragraph (g)(1), (g)(2), or (g)(3) of this AD, as applicable, at the time specified, per the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0167, dated

December 7, 2000; or Revision 2, dated October 7, 2004. After the effective date of this AD, only Revision 2 of the service bulletin may be used.

(1) If the lubrication passage is not blocked and no fractured bearing or loose or damaged joint is found, do paragraph (h) of this AD.

(2) If the lubrication passage is blocked and no fractured bearing or loose or damaged joint is found, repeat the inspection required by paragraph (f) of this AD at intervals not to exceed 60 days, and within 24 months after doing the initial inspection, do the actions required by paragraph (g)(3) of this AD.

(3) If any fractured bearing or loose or damaged joint is found, before further flight, do the corrective action (including removal of the link assembly, inspection for damage, and replacement with a new assembly if damaged), as specified in Part 2 of the Accomplishment Instructions of the service bulletin.

New Requirements of This AD

(h) For airplanes having line numbers 1 through 819 inclusive, on which the lubrication passage has not been found blocked and no fractured bearing or loose or damaged joint has been found, and on which Part 2 of Boeing Alert Service Bulletin 767–27A0167 has not been done: Within 24 months after the most recent inspection in accordance with paragraph (b)(1) of AD 2002–01–15, remove the link assembly, perform a detailed inspection of the link assembly for damage, and reinstall the undamaged link or replace it with a new link assembly that has been inspected and found to be free of damage or other discrepancy, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0167, Revision 2, dated October 7, 2004.

Detailed Inspection of Bearing Ball and Outer Race

(i) For all airplanes: Remove the link assembly, and perform a detailed inspection for cracking of the bearing ball, and for severe wear of the outer race of the bearing, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0167, Revision 2, dated October 7, 2004. Do this action at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, as applicable. Then, repeat this action at intervals not to exceed 72 months. If any cracking or severe wear is found during any inspection required by this paragraph: Before further flight, do the corrective action in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0167, Revision 2, dated October 7, 2004, or do paragraph (j) of this AD.

(1) For airplanes identified in the service bulletin as being in Group 1: Within 72 months after doing Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 767–27A0167, dated December 7, 2000; or Revision 2, dated October 7, 2004, or within 18 months after the effective date of this AD, whichever is later.

(2) For airplanes identified in the service bulletin as being in Group 2: Do the initial inspection within 72 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness; or within 18 months after the effective date of this AD; whichever is later.

Optional Terminating Action

(j) For all airplanes: Replacing the existing link assemblies of the trailing edge flaps with new, improved or modified assemblies that contain new bearings, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–27–0196, dated April 21, 2005, ends the repetitive removal/inspections required by paragraph (g), (h), and (i) of this AD, as applicable.

Actions Accomplished Previously

(k) Inspections and corrective actions done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0167, Revision 1, dated June 6, 2002, are acceptable for compliance with the corresponding actions required by this AD.

No Reporting Requirement

(l) Although Boeing Alert Service Bulletin 767–27A0167, Revision 2, dated October 7, 2004, specifies to submit certain information to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

(3) 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.

(4) AMOCs approved previously according to AD 2002–01–15 are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on September 16, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19233 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22523; Directorate Identifier 2005–NM–058–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 767 airplanes. This proposed AD would require drilling a drain hole in the flanged tubes for the E1A and E1B elevator control cable aft pressure seals; doing repetitive inspections for dirt, loose particles, or blockage of the flanged tube and drain hole for the E1A and E1B elevator control cable aft pressure seals and corrective action if necessary; replacing the aft air-intake duct assembly with a new or modified aft air-intake duct assembly and installing a dripshield; and modifying the side brace fittings and installing gutters on the horizontal stabilizer center section. This proposed AD results from reports of stiff operation of the elevator pitch control system and jammed elevator controls. We are proposing this AD to prevent moisture from collecting and freezing on the elevator control system components, which could limit the ability of the flightcrew to make elevator control inputs and result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by November 14, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6490; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–22523; Directorate Identifier 2005–NM–058–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received reports of stiff operation of the elevator pitch control system and jammed elevator controls on Model 767 airplanes. One incident involved difficulty in flaring the airplane and resulted in a subsequent hard landing. This incident as well as one other incident was caused by moisture collecting and freezing onto the left elevator cables at the aft pressure bulkhead cable seats. Another incident involved a leaking auxiliary power unit (APU) intake duct seal, which allowed water to collect and freeze onto the linear variable differential transducer (LVDT) for the center elevator autopilot. The manufacturer also determined that water could enter section 48 of the airplane through the stabilizer side of the body fairing panels. These conditions, if not corrected, could limit the ability of the flightcrew to make elevator control inputs and result in reduced controllability of the airplane.

Relevant Service Information

We have reviewed Boeing Service Bulletin 767–27A0192, Revision 1, dated March 17, 2005 (for Model 767–200, –300, and –300F series airplanes); and Boeing Alert Service Bulletin 767–27A0193, dated December 4, 2003 (for Model 767–400ER series airplanes). The service bulletins describe procedures for drilling a drain hole in the flanged tubes for the E1A and E1B elevator control cable aft pressure seals.

We have also reviewed Boeing Service Bulletin 767–27–0204, dated January 27, 2005 (for Model 767–200, –300, and –300F series airplanes); and Boeing Service Bulletin 767–27–0205, dated January 27, 2005 (for Model 767–400ER series airplanes). The service bulletins describe procedures for doing repetitive inspections for dirt, loose particles, or blockage of the flanged tube and drain hole for the E1A and E1B elevator control cable aft pressure seals and corrective action if necessary. The corrective action includes cleaning the flanged tube and drain hole.

We have also reviewed Boeing Alert Service Bulletin 767–49A0035, Revision 1, dated December 11, 2003 (for certain Model 767–200, –300, and –300F series airplanes). The service bulletin describes procedures for replacing the aft air-intake duct assembly with a new or modified aft air-intake duct assembly and installing a dripshield.

We have also reviewed Boeing Alert Service Bulletin 767–51A0027, dated December 9, 2004 (for Model 767–200, –300, and –300F series airplanes); and Boeing Alert Service Bulletin 767–51A0028, dated December 9, 2004 (for Model 767–400ER series airplanes). The service bulletins describe procedures for modifying the side brace fittings and installing gutters on the horizontal stabilizer center section. The modification includes drilling a drain hole, doing a dye penetrant inspection for cracks of the drain hole, and applying certain finishes.

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

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and Service Bulletins.''

Differences Between the Proposed AD and Service Bulletins

Boeing Service Bulletin 767–27–0204, dated January 27, 2005; and Boeing Service Bulletin 767–27–0205, dated January 27, 2005; specify an inspection threshold of 24 months after the delivery date of the airplane. However, paragraph (g)(2)(ii) of this proposed AD specifies an inspection threshold of 24 months after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness. This decision is based on our determination that ''delivery date'' may be interpreted differently by different operators. We find that our proposed terminology is generally understood within the industry and records will always exist that establish these dates with certainty.

Boeing Alert Service Bulletin 767–51A0027, dated December 9, 2004; and Boeing Alert Service Bulletin 767–51A0028, dated December 9, 2004; do not specify a corrective action if cracks are found during the dye penetrant inspection for cracks of the drain hole specified in Figure 2 of the service bulletins. This proposed AD would require operators to repair this condition according to a method approved by the FAA.

Clarification of Inspection Terminology

In this proposed AD, the inspections specified in Boeing Service Bulletin 767–27–0204, dated January 27, 2005; and Boeing Service Bulletin 767–27–

0205, dated January 27, 2005; are referred to as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the proposed AD.

Costs of Compliance

There are about 900 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 410 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate per hour is $65. We estimate that this proposed AD may have a total fleet cost of up to $1,789,953 for the initial inspection and modifications as well as a fleet cost of $26,650 per inspection cycle for the repetitive inspections.

ESTIMATED COSTS

Airplanes	Action	Work hours	Parts	Cost per airplane
Model 767 airplanes identified in Boeing Service Bulletin 767–27A0192, Revision 1, dated March 17, 2005; and Boeing Alert Service Bulletin 767–27A0193, dated December 4, 2003.	Drain hole addition	2	$0	$130.
Model 767 airplanes identified in Boeing Service Bulletin 767–27–0204, dated January 27, 2005; and Boeing Service Bulletin 767–27–0205, dated January 27, 2005.	Drain Hole Inspection.	1	$0	$65, per inspection cycle.
Model 767–200, –300, and –300F series airplanes identified in Boeing Alert Service Bulletin 767–49A0035, Revision 1, dated December 11, 2003.	Aft Air-intake Duct Assembly and Dripshield Installation.	4	$1,462 for rework kit (optional—$18,985 for new assembly used for first replacement to generate a spare assembly).	$1,722 with rework kit (optional—$19,245 with new assembly used for first replacement to generate a spare assembly).
Model 767 airplanes dentified in Boeing Alert Service Bulletin 767–51A0027, dated December 9, 2004; and Boeing Alert Service Bulletin 767–51A0028, dated December 9, 2004.	Gutter Installation	9	$1,821	$2,406.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2005–22523; Directorate Identifier 2005–NM–058–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 14, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category; as identified in Boeing Service Bulletin 767–27A0192, Revision 1, dated March 17, 2005; Boeing Alert Service Bulletin 767–27A0193, dated December 4, 2003; Boeing Alert Service Bulletin 767–49A0035, Revision 1, dated December 11, 2003; Boeing Service Bulletin 767–27–0204, dated January 27, 2005; Boeing Service Bulletin 767–27–0205, dated January 27, 2005; Boeing Alert Service Bulletin 767–51A0027, dated December 9, 2004; and Boeing Alert Service Bulletin 767–51A0028, dated December 9, 2004.

Unsafe Condition

(d) This AD results from reports of stiff operation of the elevator pitch control system and jammed elevator controls. We are issuing this AD to prevent moisture from collecting and freezing on the elevator control system components, which could limit the ability of the flightcrew to make elevator control inputs and result in reduced controllability of the airplane.

Compliance

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

Inspections, Modifications, Replacements, and Corrective Actions

(f) For airplanes identified in Boeing Service Bulletin 767–27A0192, Revision 1, dated March 17, 2005; and Boeing Alert Service Bulletin 767–27A0193, dated December 4, 2003: Within 18 months after the effective date of this AD, drill a drain hole in the flanged tubes for the E1A and E1B elevator control cable aft pressure seals by doing all the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 767–727A0192, Revision 1, dated March 17, 2005 (for Model 767–200, –300, and –300F series airplanes); and Boeing Alert Service Bulletin 767–27A00193, dated December 4, 2003 (for Model 767–400ER series airplanes); as applicable.

(g) For airplanes identified in Boeing Service Bulletin 767–27–0204, dated January 27, 2005; and Boeing Service Bulletin 767–27–0205, dated January 27, 2005: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, do a detailed inspection for dirt, loose particles, or blockage of the flanged tube and drain hole for the E1A and E1B elevator control cable aft pressure seals, and any applicable corrective action, by doing all the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 767–27–0204, dated January 27, 2005 (for Model 767–200, –300, and –300F series airplanes); and Boeing Service Bulletin 767–27–0205, dated January 27, 2005 (for Model 767–400ER series airplanes); as applicable. Do any applicable corrective actions before further flight. Repeat the detailed inspection thereafter at intervals not to exceed 24 months.

(1) For airplanes identified in paragraph (g) that are also identified in paragraph (f) of this AD: Do the inspection at the time specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD, whichever occurs later.

(i) Within 24 months after doing the actions required by paragraph (f) of this AD.

(ii) Within 24 months after the effective date of this AD.

(2) For airplanes identified in paragraph (g) that are not identified in paragraph (f) of this AD: Do the inspection at the time specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD, whichever occurs later.

(i) Within 24 months after the effective date of this AD.

(ii) Within 24 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

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.''

(h) For airplanes identified in Boeing Alert Service Bulletin 767–49A0035, Revision 1, dated December 11, 2003: Within 18 months after the effective date of this AD, replace the aft air-intake duct assembly with a new or modified aft air-intake duct assembly and install a dripshield by doing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–49A0035, Revision 1, dated December 11, 2003.

(i) For airplanes identified in Boeing Alert Service Bulletin 767–51A0027, dated December 9, 2004; and Boeing Alert Service Bulletin 767–51A0028, dated December 9, 2004: Within 60 months after the effective date of this AD, modify the side brace fittings and install gutters on the horizontal stabilizer center section, by doing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–51A0027, dated December 9, 2004 (for Model 767–200, –300, and –300F series airplanes); and Boeing Alert Service Bulletin 767–51A0028, dated December 9, 2004 (for Model 767–400ER series airplanes); as applicable; except if cracks are found during the dye penetrant inspection specified in Figure 2 of the service bulletins, this AD requires, before further flight, operators to repair this condition according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Actions Accomplished According to Previous Issue of Service Bulletin

(j) Actions accomplished before the effective date of this AD according to Boeing Alert Service Bulletin 767–27A0192, dated December 4, 2003, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(k)(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) 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.

Issued in Renton, Washington, on September 16, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19234 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22524; Directorate Identifier 2005–NM–135–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200, and A340–300 Series Airplanes, and Model A340–541 and A340–642 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 Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes, and A340–541 and A340–642 airplanes. This proposed AD would require inspecting to determine if certain emergency escape slides/slide rafts (referred to as slide/rafts) are installed in certain crew/passenger doors; and, if so, performing a one-time inspection to determine if the electrical harnesses of the slide/rafts are properly routed, and rerouting the harnesses if necessary. This proposed AD results from a report that a slide/raft failed to deploy properly during a deployment test. We are proposing this AD to detect and correct improper routing of the electrical harnesses of certain slide/rafts, which could prevent proper deployment of the slide/rafts and delay evacuation of passengers and flightcrew during an emergency.

DATES: We must receive comments on this proposed AD by October 27, 2005.

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

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

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France,

for service information identified in this proposed 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:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number ''FAA–2005–22524; Directorate Identifier 2005–NM–135–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The 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 A330–200, A330–300, A340–200, and A340–300 series airplanes, and A340–541 and A340–642 airplanes. The DGAC has received a report that, during a deployment test, an emergency escape slide/slide raft (referred to hereafter as a ''slide/raft'') failed to deploy due to interference from the slide/raft electrical harness, which had been improperly routed during a prior replacement or installation of the slide/raft. This condition, if not corrected, could prevent proper deployment of certain slide/rafts and delay evacuation of passengers and flightcrew during an emergency.

Relevant Service Information

Airbus has issued All Operators Telex (AOT) A330–25A3272–2005, Revision 01, dated March 24, 2005 (for Model A330–200 and –300 series airplanes); AOT A340–25A4259–2005, Revision 01, dated March 24, 2005 (for Model A340–200 and –300 series airplanes); and AOT A340–25A5091, Revision 02, dated June 1, 2005 (for Model A340–541 and –642 airplanes). The AOTs describe procedures for inspecting for proper routing of the electrical harnesses of the slide/rafts of certain airplane crew/passenger doors and rerouting the harnesses if necessary. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2005–077, dated May 11, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Clarification of Inspection Terminology

The ''inspection'' of the electrical harnesses specified in French airworthiness directive F–2005–077 and the AOTs is referred to in this proposed AD as a ''general visual inspection.'' We have included the definition for a general visual inspection in a note in the proposed AD.

Costs of Compliance

This proposed AD would affect about 25 airplanes of U.S. registry. The proposed actions would take about 3 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $4,875, or $195 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2005–22524; Directorate Identifier 2005–NM–135–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 27, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, –213, –311, –312, and –313 airplanes; and Model A340–541 and –642 airplanes; certificated in any category; as identified in Airbus All Operators Telex (AOT) A330–25A3272–2005, Revision 01, dated March 24, 2005; Airbus AOT A340–25A4259–2005, Revision 01; dated March 24, 2005; or Airbus AOT A340–25A5091, Revision 02, dated June 1, 2005; as applicable.

Unsafe Condition

(d) This AD results from a report that an emergency escape slide/slide raft (referred to hereafter as a ''slide/raft'') failed to deploy properly during a deployment test. We are issuing this AD to detect and correct improper routing of the electrical harnesses of certain slide/rafts, which could prevent proper deployment of the slide/raft and delay evacuation of passengers and flightcrew during an emergency.

Compliance

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

Inspections and Corrective Actions

(f) Within 1,700 flight hours after the effective date of this AD: Inspect certain crew/passenger doors as required by paragraph (f)(1) or (f)(2), as applicable, of this AD to determine if slide/rafts having certain part numbers (P/N) are installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the presence of the subject slide/rafts can be conclusively determined from that review.

(1) For Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes and Model A340–211, –212, –213, –311, –312, and –313 airplanes: On both right and left hand sides, inspect to determine the P/N of the slide/rafts of crew/passenger doors 1 and 4, and, only if it is a type 1 door, crew/passenger door 3. If crew/passenger door 3 is not a type 1 door, it is not subject to any requirement of this AD.

(i) If a slide/raft does not have P/N 7A1508–( ) or 7A1509–( ), no further action is required for that slide/raft by this AD.

(ii) If a slide/raft has P/N 7A1508–( ) or 7A1509–( ), before further flight, perform a general visual inspection of the electrical harness of the slide/raft and reroute the harness, as applicable, in accordance with paragraphs 4.2 through 4.2.4 of Airbus All Operators Telex (AOT) A330–25A3272–2005, Revision 01, or Airbus AOT A340–25A4259–2005, Revision 01; both dated March 24, 2005; as applicable.

(2) For Model A340–541 and –642 airplanes: On both right and left hand sides, inspect to determine the P/N of the slide/rafts of crew/passenger doors 1 and 4.

(i) If a slide/raft does not have P/N 7A1508–( ), no further action is required for that slide/raft by this AD.

(ii) If a slide/raft has P/N 7A1508–( ), before further flight, perform a general visual inspection of the electrical harness of that slide/raft and reroute the harness, as applicable, in accordance with paragraphs 4.2 through 4.2.4 of Airbus AOT A340–25A5091, Revision 02, dated June 1, 2005.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Actions Accomplished According to Previous Issues of AOTs

(g) Actions accomplished before the effective date of this AD in accordance with Airbus AOT A330–25A3272, Airbus AOT A340–25A4259 (for Model A340–200 and –300 airplanes), or Airbus AOT A340–25A5091 (for Model A340–541 and –642 airplanes); all dated March 17, 2005; or A340–25A5091–2005, Revision 01, dated March 24, 2005; as applicable; are considered acceptable for compliance with the corresponding actions specified in paragraph (f) of this AD.

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 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

(i) French airworthiness directive F–2005–077, dated May 11, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on September 16, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19235 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22398; Airspace Docket No. 05–ASO–7]

RIN 2120–AA66

Proposed Establishment of High Altitude Area Navigation Routes (RNAV); South Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish 16 high altitude area navigation (RNAV) routes in the South Central United States to support the High Altitude Redesign (HAR) program. The FAA is proposing this action to enhance safety and to improve the efficient use of the navigable airspace.

DATES: Comments must be received on or before November 14, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2005–22398 and Airspace Docket No. 05–ASO–7, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2005–22398 and Airspace Docket No. 05–ASO–7) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2005–22398 and Airspace Docket No. 05–ASO–7.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov,* or the **Federal Register**'s web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

As part of the on-going National Airspace Redesign, the FAA implemented the HAR program. The HAR program's focus is to develop and implement fundamental improvements in navigation structure and operating methods to allow more flexible and efficient high altitude en route operations. In support of this program, the FAA is establishing new RNAV routes for use by suitably equipped aircraft. These new routes would allow users greater flexibility in route selection. In addition, users should achieve economic benefits derived from less restrictive routing options than are currently available in the jet route structure.

These high altitude RNAV routes will be identified by the letter prefix ''Q,'' followed by a number consisting of from one to three digits.

Related Rulemaking

On April 8, 2003, the FAA published the Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes, and Reporting Points rule in the **Federal Register** (68 FR 16943). The purpose of the rule was to facilitate the establishment of RNAV routes in the National Airspace System (NAS) for use by aircraft with advanced navigation system capabilities. This rule adopted certain amendments proposed in Notice No. 02–20, Area Navigation and Miscellaneous Amendments. The rule revised and adopted several definitions in FAA regulations, including Air Traffic Service Routes, to be in concert with ICAO definitions; and reorganized the structure of FAA regulations concerning the designation of Class A, B, C, D, and E airspace areas, airways, routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish 16 RNAV routes in the South Central United States within the airspace assigned to the Memphis Air Route Traffic Control Center (ARTCC). These routes are proposed as part of the HAR program to enhance safety, and to facilitate the more flexible and efficient use of the navigable airspace for en route instrument flight rules (IFR) operations within the Memphis ARTCC's area of responsibility.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005 and effective September 15, 2005, is amended as follows:

Paragraph 2006—Area Navigation Routes.

* * * * *

Q–19 PLESS to BNA [New]

PLESS ..... Fix ..... (Lat. 37°48′35″ N., long. 88°57′48″ W.)

BNA	VORTAC	(Lat. 36°08′13″ N., long. 86°41′05″ W.)

* * * * * * *

Q–21 JONEZ to RZC [New]

JONEZ	Fix	(Lat. 34°30′57″ N., long. 95°27′34″ W.)
RZC	VORTAC	(Lat. 36°14′47″ N., long. 94°07′17″ W.)

* * * * * * *

Q–23 FSM to RZC [New]

FSM	VORTAC	(Lat. 35°23′18″ N., long. 94°16′18″ W.)
RZC	VORTAC	(Lat. 36°14′47″ N., long. 94°07′17″ W.)

* * * * * * *

Q–25 MEEOW to PXV [New]

MEEOW	Fix	(Lat. 34°19′05″ N., long. 93°31′25″ W.)
ARG	VORTAC	(Lat. 36°06′36″ N., long. 90°57′13″ W.)
WLSUN	WP	(Lat. 37°35′00″ N., long. 88°08′00″ W.)
PXV	VORTAC	(Lat. 37°55′42″ N., long. 87°45′45″ W.)

Q–26 ARG to ABROC [New]

ARG	VORTAC	(Lat. 36°06′36″ N., long. 90°57′13″ W.)
ABROC	Fix	(Lat. 34°37′05″ N., long. 87°26′07″ W.)

Q–27 FSM to ZALDA [New]

FSM	VORTAC	(Lat. 35°23′18″ N., long. 94°16′18″ W.)
ZALDA	WP	(Lat. 36°04′55″ N., long. 93°37′37″ W.)

Q–28 GRAZN to PXV [New]

GRAZN	WP	(Lat. 34°15′00″ N., long. 94°21′29″ W.)
PYRMD	WP	(Lat. 34°34′00″ N., long. 93°44′00″ W.)
HAKAT	WP	(Lat. 36°17′00″ N., long. 91°04′00″ W.)
ESTEE	WP	(Lat. 37°41′00″ N., long. 88°17′00″ W.)
PXV	VORTAC	(Lat. 37°55′42″ N., long. 87°45′45″ W.)

Q–29 HARES to PXV [New]

HARES	WP	(Lat. 33°00″00″ N., long. 91°44′00″ W.)
MEM	VORTAC	(Lat. 35°00′54″ N., long. 89°59′00″ W.)
SIDAE	WP	(Lat. 37°20′00″ N., long. 87°50′00″ W.)
PXV	VORTAC	(Lat. 37°55′42″ N., long. 87°45′45″ W.)

Q–30 SQS to VUZ [New]

SQS	VORTAC	(Lat. 33°27′50″ N., long. 90°16′38″ W.)
VUZ	VORTAC	(Lat. 33°40′13″ N., long. 86°53′59″ W.)

Q–31 DHART to PXV [New]

DHART	Fix	(Lat. 33°23′52″ N., long. 92°25′10″ W.)
TOROS	WP	(Lat. 33°40′00″ N., long. 92°10′00″ W.)
UJM	VOR/DME	(Lat. 34°34′30″ N., long. 90°40′28″ W.)
TIIDE	WP	(Lat. 37°28′00″ N., long. 87°59′00″ W.)
PXV	VORTAC	(Lat. 37°55′42″ N., long. 87°45′45″ W.)

Q–32 ELD to SWAPP [New]

ELD	VORTAC	(Lat. 33°15′22″ N., long. 92°44′38″ W.)
GAGLE	WP	(Lat. 34°08′00″ N., long. 90°17′00″ W.)
CRAMM	Fix	(Lat. 34°38′11″ N., long. 88°53′55″ W.)
BNA	VORTAC	(Lat. 36°08′13″ N., long. 86°41′05″ W.)
SWAPP	Fix	(Lat. 36°36′50″ N., long. 85°10′56″ W.)

Q–33 PROWL to DHART [New]

PROWL	WP	(Lat. 37°02′00″ N., long. 91°15′00″ W.)
LIT	VORTAC	(Lat. 34°40′40″ N., long. 92°10′50″ W.)
DHART	Fix	(Lat. 33°23′52″ N., long. 92°25′10″ W.)

Q–34 TXK to SWAPP [New]

TXK	VORTAC	(Lat. 33°30′50″ N., long. 94°04′24″ W.)
MATIE	Fix	(Lat. 34°05′42″ N., long. 92°33′02″ W.)
MEM	VORTAC	(Lat. 35°00′54″ N., long. 89°59′00″ W.)
SWAPP	Fix	(Lat. 36°36′50″ N., long. 85°10′56″ W.)

Q–36 RZC to SWAPP [New]

RZC	VORTAC	(Lat. 36°14′47″ N., long. 94°07′17″ W.)
TWITS	WP	(Lat. 36°08′32″ N., long. 90°54′48″ W.)
DEPEC	WP	(Lat. 36°06′00″ N., long. 87°31′00″ W.)
BNA	VORTAC	(Lat. 36°08′13″ N., long. 86°41′05″ W.)
SWAPP	Fix	(Lat. 36°36′50″ N., long. 86°10′56″ W.)

Q–38 ROKIT to BESOM [New]

ROKIT	Fix	(Lat. 30°29′50″ N., long. 94°30′50″ W.)
INCIN	WP	(Lat. 31°21′09″ N., long. 92°45′18″ W.)
LAREY	WP	(Lat. 32°00′12″ N., long. 91°22′22″ W.)
BESOM	Fix	(Lat. 33°35′11″ N., long. 87°39′23″ W.)

Q–40 AEX to MISLE [New]

AEX	VORTAC	(Lat. 31°15′24″ N., long. 92°30′04″ W.)
DOOMS	WP	(Lat. 31°53′08″ N., long. 91°09′56″ W.)
SALVA	WP	(Lat. 32°38′00″ N., long. 89°21′56″ W.)
MISLE	WP	(Lat. 33°24′00″ N., long. 87°38′00″ W.)

* * * * *

Issued in Washington, DC, on September 19, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–19205 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 20, 510, 514, and 516

[Docket No. 2005N–0329]

RIN 0910–AF60

Designation of New Animal Drugs for Minor Uses or Minor Species

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Minor Use and Minor Species Animal Health Act of 2004 (MUMS act) amended the Federal Food, Drug, and Cosmetic Act (the act) to establish new regulatory procedures that provide incentives intended to make more drugs legally available to veterinarians and animal owners for the treatment of minor animal species and uncommon diseases in major animal species. At this time, FDA is issuing proposed regulations to implement the act. These regulations propose procedures for designating a new animal drug as a minor use or minor species drug. Such designation establishes eligibility for the incentives provided by the MUMS act.

DATES: Submit written or electronic comments on this document by December 12, 2005. Submit comments on the information collection provisions by October 27, 2005.

ADDRESSES: You may submit comments, identified by Docket No. 2005N–0329 and/or RIN number 0910–AF60, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301-827-6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure timely processing of electronic comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal and agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and docket number or regulatory information number for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Andrew Beaulieu, Center for Veterinary Medicine (HFV–50), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9090, e-mail: *Andrew.Beaulieu@fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In enacting the MUMS act (Public Law 108–282), Congress sought to encourage the development of animal drugs that are currently unavailable to minor species (species other than cattle, horses, swine, chickens, turkeys, dogs, and cats) in the United States or to major species afflicted with uncommon diseases or conditions (minor uses). Congress recognized that the markets for drugs intended to treat these species, diseases, or conditions are so small that there are often insufficient economic incentives to motivate sponsors to develop data to support approvals. Further, Congress recognized that some minor species populations are too small or their management systems too diverse to make it practical to conduct traditional studies to demonstrate safety and effectiveness of these animal drugs. As a result of these limitations, sponsors have generally not been willing or able to collect data to support legal marketing of drugs for these species, diseases, or conditions. Consequently, Congress enacted the MUMS act, which amended the Federal Food, Drug, and Cosmetic Act (the act) to provide incentives to develop new animal drugs for minor species and minor uses, while still ensuring appropriate safeguards for animal and human health.

At this time, FDA is issuing proposed regulations to implement section 573 of the act (21 U.S.C. 360ccc-2). These regulations propose procedures for designating a new animal drug as a minor use or minor species drug. Such designation provides eligibility for certain incentives established by the MUMS act, including exclusive marketing rights associated with the conditional approval or approval of designated new animal drugs and for grants to support designated new animal drug development. In accordance with section 573 of the act, these proposed regulations provide for designation of a new animal drug to be granted only when the drug is intended for a minor use or use in a minor species and only when the same new animal drug, in the same dosage form, for the same intended use is not already approved under section 512 of the act (21 U.S.C. 360b), conditionally approved under section 571 of the act (21 U.S.C. 360ccc), or designated under section 573 of the act at the time that a sponsor requests designation.

The incentives in the MUMS act and these proposed regulations are modeled on those provided by the human orphan drug program. These incentives include the following: (1) Eligibility for grants and contracts to defray the costs of qualified safety and effectiveness testing expenses and manufacturing expenses incurred in the development of designated new animal drugs and (2) a 7-year period of exclusive marketing rights to enable sponsors to recover costs of drug development without competition. Marketing exclusivity for nondesignated drugs is limited to 3 or 5 years of protection from generic copying (section 512(c)(2)(F) of the act). The exclusive marketing rights for designated drugs provide protection from generic copying and from approval of another pioneer application for the same drug, in the same dosage form, for the same intended use.

Other major incentives of the MUMS act include the following: (1) Conditional approval, which is

established by section 571 of the act and provides for animal drug marketing after all safety and manufacturing components of a new animal drug approval have met the standards of section 512 of the act (for the effectiveness component, a reasonable expectation of effectiveness must be established, after which sponsors have up to 5 years to complete the demonstration of effectiveness by the standards of section 512 of the act and achieve a full approval) and (2) indexing, which is established by section 572 of the act (21 U.S.C. 360ccc-1) and provides for legal marketing of unapproved new animal drugs through an integrated process of agency and expert panel review of drugs intended only for use in minor species. Regulations to implement these provisions of the MUMS act will be proposed in the future.

II. Proposed Regulations

A. Definitions (Proposed §§ 516.3 and 516.13)

Under the MUMS act, there are two key factors in determining the eligibility of a new animal drug for designation: (1) The new animal drug must be intended for minor use or use in a minor species and (2) the new animal drug must not be the same drug, in the same dosage form, and for the same intended use as an animal drug already designated, conditionally approved, or approved. The agency is proposing definitions for terms or phrases relevant to the proposed regulations. Discussion regarding key definitions follows.

1. Minor Species

The MUMS act defines minor species as animals other than humans that are not major species. The MUMS act defines major species as cattle, horses, swine, chickens, turkeys, dogs, and cats, along with any species the Secretary of Health and Human Services adds to this definition by regulation (see section 201(nn) and (oo) of the act (21 U.S.C. 321 (nn) and (oo)).) The proposed rule includes these definitions for ''major species'' and ''minor species'' in proposed § 516.3(b)(5) and (b)(6).

2. Minor Use

The MUMS act defines ''minor use'' to mean ''the intended use of a drug in a major species for an indication that occurs infrequently and in only a small number of animals or in limited geographical areas and in only a small number of animals annually'' (section 201(pp) of the act).

With respect to the definition of minor use, the Senate report (S. Rept. 108–226) concerning the bill before the Senate (S. 741), which included proposed definitions and a section on the designation of new animal drugs that were identical to those contained in the MUMS legislation enacted by Congress, stated the following:

> This definition incorporates the existing definition in the Code of Federal Regulations (21 CFR 514.1(d)(1)) with a further limitation to small numbers to assure that such intended uses will not be extended to a wider use. The Secretary is expected to further clarify this definition in regulations implementing this section. FDA is given broad latitude in determining what constitutes a minor use in a major species. The Congress intends for FDA to make the determination of minor use by evaluating, in the context of the drug development process, whether the incidence of the disease or condition occurs so infrequently that the sponsor of a drug intended for such use has no reasonable expectation of its sales generating sufficient revenues to offset the costs of development. The Congress does not intend for FDA to establish a test of commercial value, but rather directs FDA to determine whether the expected low use of a drug would discourage its development. (S. Rept. 108–226 at 12–13.)

As is clear from the quoted discussion in the Senate report, Congress incorporated part of FDA's existing definition of ''minor use'' in § 514.1 (21 CFR 514.1) into the MUMS act definition of ''minor use.'' In 1983 FDA issued a definition of ''minor use'' as part of regulations to provide for the agency's interpretation as to what data for minor use drugs would be sufficient to meet the current statutory standards (see 48 FR 1922, January 14, 1983). FDA's definition of ''minor use'' included use of drugs ''in any animal species for the control of a disease that (*1*) occurs infrequently or (*2*) occurs in limited geographic areas'' (§ 514.1(d)(1)(i)). Thus, minor use was previously only defined qualitatively by one of two factors that limited the size of the population needing treatment. The first limiting factor was that a disease occurred infrequently (i.e., rarely) in the total population of animals. FDA believes that the term ''infrequently'' includes both diseases or conditions that are uncommon in that they have a low but regular rate of occurrence over time in a given population and diseases or conditions that occur only sporadically as irregular outbreaks in a given population with a significantly higher rate of occurrence than normal when they occur and may not occur at all between outbreaks. The second limiting factor was that a disease or condition occurred in only a limited geographic area.

With the MUMS act, in respect to minor uses in major species, Congress added a ''small number'' limitation to both prongs of FDA's earlier definition: ''an indication that occurs infrequently and in only a small number of animals or in limited geographical areas and in only a small number of animals annually'' (21 U.S.C. 321(pp)). The Senate report indicates that the ''small number'' limitation added to both prongs was to ensure that the intended uses would not be ''extended to a wider use.'' (S. Rept. 108–226 at 12). By doing this, Congress not only required that the population of animals be limited by one of the two qualitative factors, but also required that, in either case, the population of animals affected must also meet the ''small number'' quantitative criteria. As a result, while some indications may be infrequent (because they are uncommon or occur only sporadically), they must also meet the requirement that they occur in only a small number of animals. Similarly, an indication may occur in a limited geographical area, but it must also occur in only a small number of animals annually. Congress defined ''minor use'' populations as limited to a ''small number,'' but did not specify the small number(s), leaving it to the agency to further clarify the definition in this regard by regulation.

With respect to the term ''infrequently,'' the Senate report states that FDA should determine whether the ''incidence'' of the disease ''occurs so infrequently that the sponsor of a drug intended for such use has no reasonable expectation of its sales generating sufficient revenues to offset the costs of development'' (S. Rept. 108–226 at 12–13). With respect to both prongs of the ''minor use'' definition, Congress did not intend FDA to establish a test of commercial value, but rather to determine ''whether the expected low use of a drug would discourage its development'' (S. Rept. 108–226 at 13). Consequently, FDA in these regulations has not established a dollar value or profit margin criterion in relation to ''minor use.''

The term ''annually'' only appears in the second prong of the statutory definition of ''minor use'' in connection with the small number of animals with the disease ''in limited geographical areas.'' Thus, a minor use indication that occurs in a limited geographical area must also occur in a small number of animals annually. While ''annually'' does not apply to the first prong of the definition of minor use, ''infrequently and in only a small number of animals'', FDA believes that for ''a small numbers of animals'' to have meaning, data on the number of animals in which the indication occurs must be considered

over a period of time. FDA believes that to give effect to the statutory language, it is appropriate to annualize the data. For example, if a particular disease appears only once every 5 years, the number of animals may be relatively large, but when annualized, the disease may occur in only a ''small number of animals.'' Looking at annualized numbers of affected animals is a reasonable approach under the ''minor use'' definition to considering whether there are sufficient drug development incentives in the absence of the MUMS incentives.

The term ''limited geographical areas'' is defined in proposed section 516.3(b)(4) as follows: ''as used in the minor use definition, means regions of the United States distinguished by physical, chemical, or biological factors that limit the distribution of a disease or condition.'' If, for example, an area's mineral profile or moisture availability (chemical factors) can cause a medical condition directly (nutrient deficiency) or indirectly (suitable environment for specific parasites or bacteria), the case may be argued that the condition will only affect animals in that particular region. Chemical factors might also include possible environmental exposure to pesticides or other toxins used in a limited area. Physical factors such as altitude, proximity to salt or fresh water, or temperature can also influence the presence of parasites, vectors for parasites, as well as other microbes. These factors can also influence an animal's susceptibility to disease directly (high altitude disease) or indirectly if conditions cause stresses that weaken the immune system. Biological factors include the presence of vectors for disease, presence of toxic plants, and inherent limitations of a species to live in a particular environment (e.g., saltwater versus freshwater fish).

As is clear from the minor use definition, geographic limitations alone will not be sufficient to make a particular intended use a minor use in a major species. The number of animals that live in a particular limited geographic area can still be very large. It was clearly the intent of Congress to limit the definition of minor use to a small number of animals and that is the intent of the definitions included in this proposed rule.

Small Number of Animals

The agency intends at some time in the future to propose that ''small number of animals'' be defined in regulations as a specific number for each of the seven major species. However, the number of animals that will provide the upper limit for the definition of ''small number of animals'' for each major species is, at this time, difficult to identify. Many factors need to be considered in establishing these numbers.

With respect to defining minor use, and by implication ''small number of animals,'' Congress further noted in the Senate report (S. Rept. 108–226) accompanying the MUMS act that:

> FDA may initially make such determinations on a case-by-case basis. These initial determinations may form the basis for establishing or revising regulations which clarify the grounds or the process for determining whether a new animal drug is intended for a ''minor use''.

(S. Rept. 108–226 at 13).

Therefore, at this time, the agency is proposing only to clarify various other aspects of the current statutory definition of minor use, to gather further information to support the establishment of a ''small number of animals'' for each major species, and to use the information currently available to make minor use determinations on a case-by-case basis. The agency particularly requests comment on the criteria it should use to determine the number that constitutes a ''small number of animals'' for each major species. Comments should clearly explain the rationale for any criteria suggested including economic, scientific, or other relevant factors. In an effort to stimulate comment and to increase the specificity of comments, the agency has summarized in the following paragraphs certain information it has considered to date regarding defining ''small number of animals.''

a. *Human orphan drugs as a model.* For human orphan drugs, the act provides that a disease or condition that affects less than 200,000 cases in the United States qualifies as a ''rare disease or condition'' (21 U.S.C. 360bb(a)(2)). As one approach to defining ''small number of animals'' for the purpose of implementing the MUMS act, the agency determined what percentage of the U.S. population of humans the number 200,000 represented when Congress enacted this meaning of ''rare disease or condition.'' This calculation provided a figure of roughly 0.1 percent of the population. This percentage was then applied to populations of major species in the United States. Initial analysis indicated that using the 0.1 percent figure might be helpful with respect to dogs, cats, and horses. However, using this figure did not seem helpful for cattle, swine, chickens, and turkeys because the populations involved, the manner of drug use in those populations, and the drug development processes for those species are too dissimilar to the human drug scenario. Further analysis made clear that these factors were not sufficiently comparable for this approach to be viable, even for dogs, cats, and horses, and the approach was rejected.

While FDA recognizes classes of animals within species in the animal drug development process (examples include beef versus dairy cattle and broiler versus laying chickens), the diversity of these classes and the difficulty in determining whether a disease or condition might be unique to a class would make using these subpopulations of a species problematic in determining a maximum number of animals for a minor disease or condition. Therefore, using one maximum number would appear to be appropriate for animal species as well as humans, because for each major animal species the small number is intended to be a reflection of the market potential for a drug. It is immaterial whether that market potential exists because the disease or condition is relatively evenly distributed throughout the population or is largely confined to a particular age, gender, breed, or production class within that population. If the same number of animals is involved in each case, the market potential is essentially the same in each case. Therefore, one number appears to be appropriate as a means of determining the ''small number'' for a ''minor use'' for each of the seven species, regardless of subpopulations.

b. *Characterizing the population of animals affected by a disease or condition.* The human orphan drug maximum number for ''rare disease or condition'' is based on the prevalence of a disease or condition. That is the total number of people affected by the disease or condition at a given time. This differs from the incidence of a disease or condition, which is the number of new cases diagnosed over a period of time, e.g., the number of cases diagnosed per year. For several reasons, using prevalence of disease or condition is problematic for determining the number of animals for MUMS designation purposes.

In the case of cattle, swine, chickens, and turkeys, the number of animals affected with a given disease or condition at a given time does not take into account the fact that for animals like broiler chickens, the lifespan is so short that several flocks will go through the same facility in a year. Therefore, the number of birds potentially ill and/or treated over a year is much greater than the population that is ill on any

given day. This suggests that the use of an incidence rate would be more appropriate in such cases.

However, incidence rates alone are also an imperfect descriptor even in the case of cattle, swine, chickens, and turkeys. The number of animals diagnosed with a disease or condition does not accurately reflect the number that will be administered a drug. For example, in the case of chickens, treatment of individual birds is impractical. When there is an outbreak of disease the entire flock is treated, including individuals with no signs of illness. In an attempt to limit minor use to a small number of animals, the way that drugs are actually administered should be taken into account. The number should refer to all birds administered a drug, not just to those clinically ill. This is significant for the determination of small number of animals because the actual size of the market is larger than the number of sick birds. A similar situation exists with respect to drugs intended for diagnosis or prevention of a disease or condition in major species. Such drugs will be subject to the same small number as those intended for treatment of a disease or condition.

Prevalence rates can be more appropriately used for horses, dogs, and cats because these animals' life spans typically exceed 1 year. Such animals are likely to be treated for chronic diseases over several years. These are added to newly diagnosed cases to provide the prevalence of the disease.

The number of humans diagnosed with a disease or condition (i.e., the prevalence of a disease in humans) is a close approximation of the number that will be treated for that disease or condition, if a treatment exists. For animals, there may be a very significant difference in the numbers of animals afflicted with a disease or condition and the number that will actually be diagnosed and treated. Many animals do not get regular veterinary care and, therefore, the probability of diagnosis is lower for animals than for humans. Furthermore, depending on the diagnosis, prognosis, and cost, a much higher percentage of animals will not be treated even after diagnosis.

Economic issues figure prominently in the calculation of the number of animals that will be treated for a disease or condition. In contrast to human medicine, there is essentially no third-party payment for animal drugs. Thus, cost for the treatment of animals is a major consideration. Because euthanasia is an option for animals, expensive or difficult treatment may be rejected by animal owners. On the other hand, because dogs, cats, and horses may be highly valued as ''family members,'' the amount of money expended on individual animals of these species may far exceed that generally spent on individuals of the other major species of animals.

In the case of animals of agricultural importance, the decision to treat is based almost entirely on economic factors. In the case of chickens, where the profit margin is pennies per bird, it is often not worthwhile to treat.

It appears that for dogs, cats, and horses, the market potential for a drug at the time of its designation is reasonably represented by the total number of cases of the disease or condition estimated to exist over the course of a year at the time of a request for designation, taking into consideration that only a portion of the total affected population will actually be treated.

In the case of cattle, swine, chickens, and turkeys, the market potential for a drug at the time of its designation is reasonably represented by an estimation of the number of cases of a disease or condition that will occur in the total population of animals that will be alive over the course of a year at the time of a request for designation, taking into consideration that herd/flock treatment increases the number of animals administered a drug, and also taking into consideration that only a portion of the total affected population (and associated herd/flock mates) will actually be treated.

c. *Other information to be considered.* The agency is seeking information to help clarify three general issues with respect to each major animal species:

- The cost of drug development for a new chemical entity, adding an intended use for a new major species to a drug already approved for an intended use in another major species, and adding a new intended use to an existing approved drug for the same major species;
- The annual return on investment over a 7-year period necessary to stimulate the development of each of the previously mentioned costs; and
- The number of animals eligible to be administered the drug on an annual basis necessary to produce these returns on investment.

The information made available to FDA from all sources will be analyzed and used to establish the ''small numbers of animals'' for each major species needed to complete the clarification of the definition of minor use in major species. The agency reiterates its request for comment and solicits as much additional information as those commenting are willing to share regarding this issue. The FDA emphasizes that it is not now proposing a specific small number of animals for each major species, but is only proposing to establish such numbers in the future after it has collected additional information. In the meantime, it is proposing to make such decisions on a case-by-case basis using the best information available at the time a decision is required.

3. Same Drug/Same Dosage Form/Same Intended Use

For a new animal drug to be eligible for designation under section 573 of the act, it must be intended for minor use or use in a minor species and must not be the same drug, in the same dosage form, for the same intended use as an animal drug already designated, conditionally approved, or approved. Therefore, the agency is also proposing to define ''same drug,'' ''same dosage form,'' and ''same intended use'' in proposed section 516.3.

a. *Same drug.* The first test of sameness to determine eligibility of an animal drug for designation is ''same drug.'' The legislative history of the MUMS act in Senate Committee Report 108–226 states:

> The Secretary has discretion to define the term ''same drug'' as used in this section. In defining ''same drug'' the Secretary should take into account the purpose of this legislation to promote the development of minor use and minor species new animal drugs. A sponsor should be able to reap the benefits of designation only for products that are materially different from products that have already been approved, conditionally approved, or designated. So, for example, where two products differ only with respect to one or more inactive ingredients, they are the ''same drug'' for purposes of this section. (S. Rept. 108–226 at 19).

The definition of ''same drug'' contained in this proposed rule is intended to give protection to the first conditionally-approved or approved MUMS-designated drug against a second sponsor's attempts to defeat exclusive marketing rights by introducing minor molecular changes. Because one goal of the MUMS act is to increase the availability of new animal drugs for minor species and minor uses, a subsequent drug with minor chemical differences will be considered different only if the subsequent drug can be shown to be functionally superior to the first. The burden of proof is on the sponsor of the subsequent drug to demonstrate that its drug is safer or more effective in some way.

FDA is proposing this approach because it provides the best available mechanism to protect the integrity of

marketing exclusivity, the chief incentive for MUMS drug development established by Congress, while allowing functionally superior drugs with similar chemical structure to be approved in a timely manner. This proposal is consistent with the human orphan drug regulations as codified in 21 CFR part 316 (see 21 CFR 316.3(b)(13)).

Functional superiority of a subsequent drug cannot be determined until the first drug is conditionally approved or approved because an unapproved drug has no labeled dosage and corresponding safety and effectiveness profile to which the challenger can be compared. Therefore, a sponsor of a subsequent drug with minor chemical differences from a MUMS-designated drug may not seek designation of the subsequent drug based on functional superiority until after the designated drug is conditionally approved or approved. If a drug is found to be functionally superior to a designated new animal drug after the designated drug is approved or conditionally approved, it will be considered a different drug and may be granted MUMS designation. After conditional approval or approval, it will enjoy its own 7-year period of exclusive marketing rights and the first drug's designation, conditional approval or approval, and period of exclusive marketing will remain in effect.

b. *Same dosage form*. The second test of sameness which the statute establishes to determine eligibility of an animal drug for designation is ''same dosage form.'' The agency proposes to use the long-established dosage form categories listed in Title 21 of the Code of Federal Regulations to implement this statutory requirement.

The categories follow: Oral dosage forms (21 CFR 520), implantation or injectable dosage forms (21 CFR 522), ophthalmic and topical dosage forms (21 CFR 524), intramammary dosage forms (21 CFR 526), miscellaneous dosage forms (21 CFR 529), and drugs in animal feeds (21 CFR 558).

Dosage forms that do not clearly fit within a specific category would fall within the miscellaneous category and the sameness of dosage form would be determined on a case-by-case basis. Drugs currently in the miscellaneous category include, for example, products administered by inhalation to terrestrial animals and products formulated for use by immersion of aquatic species. Although medicated animal feeds (i.e., drugs in animal feeds) have much in common with certain oral dosage forms, they are treated as a separate category because they are regulated quite differently. For example, drugs for use in animal feeds are subject to different manufacturing practices than other drugs and may not be used in an extralabel manner (21 CFR 530.11(b)). Thus, they are treated as separate dosage forms for purposes of implementing the MUMS act.

c. *Same intended use*. The third test of sameness which the statute establishes to determine the eligibility of an animal drug for designation is ''same intended use.'' ''Intended use'' is defined in proposed 516.3(b)(11) for the purposes of subpart B of part 516 as ''the intended treatment, control, or prevention of a disease or condition or the intention to affect the structure or function of the body of animals within an identified species, subpopulation of a species, or collection of species.'' Although this definition is generally consistent with the manner in which the phrase has been used in the context of new animal drug approval, the definition proposed here is to be applied solely to the phrase ''intended use'' as it is used in these proposed regulations to determine whether two intended uses are the ''same intended use'' for purposes of qualifying for designation. It is not meant to define ''intended use'' in any other context. This interpretation of ''intended use'' for the purpose of designation is meant to protect the value of the exclusivity incentive provided by the statute. Because there can only be one designation for the ''same drug,'' ''same dosage form,'' and ''same intended use,'' it is important that a minor difference in the intended use not permit a second sponsor to be granted designation for virtually the same product. For the purpose of new animal drug approval, it is important that every intended use to be included on the label be supported by data. Thus, the definition of ''intended use'' for purposes of designation reflects the need to protect product exclusivity.

Accordingly, the agency identified four basic principles for evaluating whether two intended uses represent the ''same intended use.'' The first principle of ''same intended use'' establishes that whether two intended uses are considered the same, will not depend on whether exactly the same words are used to describe that intent on the labels of the products. Despite attempts over the years by FDA to increase the consistency of labeled intended uses (often also referred to as indications or claims), there remain many different ways to state the same intended use on a label. Differences in language alone do not necessarily result in different intended uses in the context of drug designation. For example, a disease or a causative organism may be known by several different names. The fact that two intended uses involve different names for the same disease or causative organism does not cause the intended uses to be different.

The second principle of same intended use establishes that if one of the intended uses falls completely within the scope of the other, they are considered the same intended use for the purposes of designation. For example, an intended use for a particular disease or condition in all aquarium fish would include use for that disease or condition in black mollies (a type of aquarium fish) and, therefore, would be considered the same intended use for the same disease or condition in black mollies. Similarly, designation for black mollies would preclude a designation for all aquarium fish (but not a designation for all aquarium fish except black mollies).

This interpretation is driven by the marketing exclusivity provisions of the designation provision of the statute because marketing exclusivity for all aquarium fish includes exclusivity with respect to that intended use in all species within that designation.

The third principle of same intended use establishes that an intended use for a disease or condition caused by one (or a subset) of causative organisms is considered different from an intended use for the same disease or condition caused by a different causative organism (or subset of organisms) when the causative organisms involved can reliably be shown to be clinically significant causes of the disease or condition. For example, intended use for the treatment of pneumonia in cattle caused by *Pasteurella multocida* is not the same as intended use for the treatment of pneumonia in cattle caused by *Histophilus somni* (*Haemophilus somnus*).

The fourth principle of same intended use establishes that two intended uses that involve the same disease or condition but in different species, or in different generally recognized subsets of the same species (such as production classes of food species), are not the same intended use. For example, an intended use for a particular disease or condition in growing turkeys is not the same as an intended use for the same disease or condition in laying turkeys.

B. Submission of Requests for Designation (Proposed § 516.14)

The agency proposes that all correspondence relating to a request for designation of a MUMS drug must be addressed to the Director, Office of

Minor Use and Minor Species Animal Drug Development.

C. Eligibility to Request Designation (Proposed §§ 516.16 and 516.22)

The agency proposes that the person requesting designation must be the real party in interest of the development and the intended or actual production and sales of the drug because only this party can assure active pursuit of approval under section 512 or 571 of this act with due diligence required by section 573(a)(3)(B) of the act. In proposed § 516.22, the agency is proposing that foreign sponsors must have a permanent-resident U.S. agent to submit the request for designation so that the agency may assure that certain notifications (such as under section 573(c)(2)(A) of the act) and other communications with the sponsor are legally and effectively made.

D. Content and Format of a Request for MUMS-Drug Designation (Proposed § 516.20)

Proposed § 516.20 describes the content and format for a request for MUMS designation. Under proposed § 516.20, the request must be specific and must include certain information about the sponsor; a description of the proposed intended use for the drug; a description of the drug and dosage form; a discussion of the scientific rationale for the intended use of the drug with reference to data; a specific description of the product development plan for the drug, its dosage form, and the intended use; if MUMS designation is based on a minor use, documentation that the proposed intended use is a minor use; a statement that the requestor is the real party in interest of the development and the intended or actual production and sales of the product; and a statement that the sponsor acknowledges that FDA will make certain information regarding the designation public. The information required to be included in a request for designation parallels that required for human orphan drug designation, but with some differences due to differences in the governing statutes and to differences between the health care practices for animals and humans in the United States.

For new animal drugs, each designation must be unique. That is, each designation is unique with respect to the drug and dosage form for use in the species or group of species for the treatment, control, or prevention of the disease or condition; or to affect the structure or function. This differs from the provisions of the human orphan drug legislation, which permits designation of multiple identical drugs prior to approval of any one of the drugs. The MUMS act facilitates the development of a broad range of animal drugs in part by discouraging multiple sponsors from pursuing identical uses.

Because each MUMS designation is unique in this way, it is important for the effective implementation of section 573(a)(2)(B) of the act that the initial designation of a drug be based on evidence that requesting sponsors clearly understand their responsibilities in terms of drug research and development and are prepared to accept those responsibilities. The most effective means of ensuring this is for the sponsor to work closely with the personnel in the agency who will be responsible for reviewing the information submitted in support of the drug's conditional approval or approval. The parties should mutually agree that the scientific rationale for the drug is credible and that timely development of the drug in accordance with a drug development plan is possible. While not required, this is most effectively accomplished to the benefit of both the sponsor and the agency through the presubmission conference provisions of the investigational new animal drug (INAD) review process of the Center for Veterinary Medicine (CVM). Such presubmission conferences are held with members of CVM's Office of New Animal Drug Evaluation under the provisions of § 514.5 and may be held in person or via teleconference. The memorandum of conference that is created under the provisions of § 514.5(f) would suffice to document that the requirements of proposed § 516.20(b)(5) and (b)(6) have been met. Because a clear understanding by sponsors of agency approval requirements and the mutual development of a drug development plan to meet those requirements is so obviously beneficial to the effective utilization of resources by both parties, most new animal drug sponsors routinely follow this process and, therefore, for these sponsors, many of the requirements for submission of information under proposed § 516.20 to support designation would be met by reference to information routinely present in an INAD file.

Given the relatively limited return on investment associated with new animal drugs intended for minor uses or minor species, it is particularly critical, in keeping with the intent of the MUMS legislation, to enhance the availability of such drugs, that both sponsor and agency resources associated with MUMS drug development be used effectively and efficiently. The information proposed under § 516.20(b)(5) and (b)(6) as a condition of granting a designation is essential for evaluation of a request for designation. Furthermore, as noted previously, the person requesting the designation must be the real party in interest of the development, production, and sale of the subject drug as proposed under § 516.20(b)(8). The information described in § 516.20(b)(1) through (b)(4) of the proposed rule is required to make the statutorily required determination under section 573(a)(2)(B) of the act that the drug requested for designation is not the same drug, in the same dosage form, for the same intended use as a drug already approved or conditionally approved. Proposed § 516.20(b)(7) and (b)(9) is similarly a reflection of specific requirements of the MUMS legislation.

E. Documentation of Minor Use Status (Proposed § 516.21)

Under proposed § 516.21, if the sponsor seeks MUMS-drug designation for a drug intended to be used as a minor use in a major species, the sponsor must include documentation that the use is limited to a small number of animals. Proposed § 516.21 details the documentation that is required.

The agency is proposing to define ''intended use'' of a drug and, more specifically, ''same intended use'' of a drug in these regulations. The primary discussion of these definitions can be found in section II.A.2.c of this document. It is important to reiterate here that this definition of intended use is to determine whether two intended uses are the ''same intended use'' for purposes of qualifying for designation; the definition is not directly applicable to the determination of whether a particular use in a major species is a minor use. As previously discussed, it is clear that Congress intended the agency's determination of whether a use is minor to depend upon the existence of a disease or condition in a major species that occurs in such a small number of animals that it would not warrant drug development in the absence of special incentives. Thus, whether a use is a minor use in a major species is determined on the basis of the existence or occurrence of a disease or condition in the total population of a major species, and not by any population of animals that the sponsor may choose to define by the intended use or conditions of use that it places on its label.

Once the use of a drug for a given disease or condition is determined to be a minor use in a major species, a sponsor may establish an intended use for the product that represents only a

subset of that minor use. That is, while a sponsor might be encouraged by the agency to develop the product for use in the entire population of animals comprising the minor use so that the drug would provide maximum benefit when used in accordance with its label, a sponsor generally may limit the intended use to only a portion of the eligible population. Marketing exclusivity will, however, be determined by the scope of the intended use on the label of the product.

Until the number for ''small number of animals'' for each major species has been formally established by regulation, a request for designation of a drug as a minor use in a major species needs to be supported by evidence that such intended use involves only a small number of animals of a major species as represented by the market associated with the potential population of animals to be administered the drug relative to the cost of drug development as discussed previously. Thus, such a request for designation must include information regarding the presence of the relevant disease or condition in the relevant major species on an annual basis, as well as information regarding the potential market represented by that number of animals relative to the development cost for the particular intended use being proposed.

The agency recognizes that such information is not readily available for uncommon animal diseases or conditions. Because there are no insurance records and national databases are lacking for diseases of animal species, except perhaps databases for diseases reportable because of their public health significance, it is difficult to determine verifiable numbers of cases for animal diseases or conditions on a National basis. Nevertheless, the agency understands that sponsors routinely do their own marketing research to determine the economic feasibility of pursuing any new animal drug approval.

As discussed previously, the number of concern with respect to minor use is the total number of animals that could potentially be administered a drug in association with the treatment, control, or prevention of a given disease or condition (annualized) taking into account that, for a variety of reasons, not all of those animals will actually be administered the drug.

Therefore, a sponsor needs to demonstrate through verifiable sources (surveys, literature, etc.) that the number of animals that could potentially be administered a drug in association with the treatment, control, or prevention of a given disease or condition (annualized) represents a market potential sufficient to support drug development with the added incentives of the MUMS act, but not without them.

A sponsor may request that the agency determine that the total population of animals that is affected by a particular disease or condition for which a MUMS drug is being considered for development should be decreased by the size of any subset of the total population to which administration of the drug can be demonstrated to be not medically justified. If such a demonstration can be made to the satisfaction of the agency, the remaining population of animals affected by that disease or condition would be used to estimate the market potential for the drug.

A sponsor may demonstrate that administration is not medically justified in a subset of animals by, for example, referencing a consensus standard of practice established by an authoritative source that recommends against the administration of either the MUMS drug itself or drugs of the class of which the MUMS drug is a member to a subset of the population. In the absence of a consensus standard, the sponsor would need to provide reliable evidence that there is some attribute of the MUMS drug that renders its administration to the identified subset of animals not medically justified. A specific analysis of the relative risks and benefits of administering the MUMS drug to the subset of animals at issue, supported by all reliable information available to the sponsor, would be needed.

F. Timing of Requests for MUMS-Drug Designation (Proposed § 516.23)

In accordance with the requirement of section 573(a)(1) of the act, the agency is proposing that requests for designation of a new animal drug be accepted only prior to submission of a new animal drug application (NADA) for the drug under section 512 or 571 of the act.

G. Granting and Refusal to Grant MUMS-Drug Designation (Proposed §§ 516.24 and 516.25)

As required by sections 573(a)(2)(A) and (a)(2)(B) of the act, FDA proposes to refuse to grant a request for designation when the involved new animal drug is not intended for use in a minor species or for a minor use in a major species or the same drug in the same dosage form for the same intended use is already designated, conditionally approved, or approved. The agency is also proposing to refuse to grant a request for MUMS-drug designation if the request is found to contain any untrue statement of a material fact, or to omit material information. As noted previously, the agency also proposes to refuse to grant designation if the request fails to contain a credible scientific rationale supporting the intended use, or fails to contain documentation sufficient to support an agency determination that successful drug development in a timely manner is possible.

H. Amendment to MUMS-Drug Designation (Proposed § 516.26)

The agency is proposing to allow sponsors to apply for amendments to MUMS-drug designation up to the time of approval of their marketing applications. The purpose of this proposal is to allow for situations in which testing data demonstrate that the proposed intended use is inappropriate due to unexpected issues of safety or effectiveness. This can occur when data demonstrate that the effectiveness of a drug in different populations or for different diseases or conditions differs from that for which the drug was initially designated. It can also occur when a group of species was originally designated, such as ''all finfish'' and it is subsequently discovered that the drug is not safe for use in a subset of fish species. The proposed intended use may have to be expanded or narrowed based on such unexpected findings. FDA would grant such an amendment request only if it found that the initial designation request was made in good faith and that the amendment is sought only to render the MUMS-drug designation consistent with unanticipated test results. If an amendment request for a minor use designation was to involve a new or expanded disease or condition and the number of animals affected would then exceed what would be considered a small number of animals annually, the amendment could not be granted.

I. Change in Sponsorship (Proposed § 516.27)

The agency proposes that the sponsor of a MUMS-designated drug may transfer sponsorship to another person. Such a transfer of sponsorship of the MUMS-designated drug will include transfer of the designation provided that this transfer of sponsorship is appropriately documented by both parties to the transfer and that the sponsor accepting the transfer certifies understanding of the responsibilities associated with developing or maintaining a MUMS-designated drug and demonstrates the capability of meeting those responsibilities as a

condition of agency approval of the transfer.

Because MUMS-drug designations are unique and because the initial sponsor obtained designation after request and demonstration of capability to meet the requirements of section 573 of the act with respect to development and production of the designated drug, transfer of sponsorship of a MUMS-designated drug must depend upon a similar demonstration and agency approval.

J. Publication of MUMS-Drug Designations (Proposed § 516.28)

As required by section 573(a)(4) of the act, the agency will make public the designation and termination of designation of MUMS drugs. The agency proposes to meet this requirement by periodically updating a publicly available list of MUMS-designated drugs which would include basic identifying information regarding each MUMS drug on the list.

K. Termination of MUMS-Drug Designation (Proposed § 516.29)

The agency proposes to terminate designation of a MUMS drug on any of the grounds specified in section 573 of the act, or because the request is found to contain an untrue statement of material fact or to omit material information, or because the agency withdraws approval of the application for the drug.

For the purposes of this proposed rule, the phrase ''actively pursuing approval or conditional approval with due diligence'' is intended to encompass a MUMS drug developer's good faith effort to pursue drug development and approval, or drug development, conditional approval, and subsequent approval, in a timely manner. Under proposed § 516.29(d), at a minimum, due diligence must be demonstrated by submission of annual progress reports in accordance with proposed § 516.30 that demonstrate the sponsor is progressing in accordance with the drug development plan submitted to the agency under proposed § 516.20 and by compliance with all applicable INAD requirements. However, FDA will consider the circumstances and may determine that other factors demonstrate an absence of due diligence.

L. Annual Reports for a MUMS-Designated Drug (Proposed § 516.30)

The agency proposes to require brief annual progress reports to the INAD file as one effective means of ensuring sponsor compliance with the requirement of section 573(a)(3)(B) of the act that new animal drug approval for a MUMS-designated drug be pursued with due diligence.

M. Exclusive Marketing Rights (Proposed §§ 516.31 and 516.34)

Under proposed § 516.34, the agency will send the sponsor of a conditionally-approved or approved MUMS-designated drug timely written notice recognizing exclusive marketing rights and make the same information publicly available by **Federal Register** publication. Under section 573(c)(1) of the act, FDA may not conditionally approve or approve another application for the same new animal drug, in the same dosage form, for the same intended use within 7 years after FDA has approved or conditionally approved a designated MUMS drug. For this reason, no further action by FDA to bring about exclusive marketing rights is necessary. Proposed § 516.31 reflects the grounds for termination of designation and associated exclusive marketing rights established by section 573 of the act and discussed in association with proposed § 516.29 in section II.K of this document.

N. Insufficient Quantities of MUMS-Designated Drugs (Proposed § 516.36)

Proposed § 516.36 addresses situations where insufficient quantities of MUMS-designated drugs are being produced to meet demand. Under section 573(c)(2)(A) of the act, whenever the agency finds that a conditionally-approved or approved MUMS-designated drug sponsor cannot assure the availability of sufficient quantities of the drug to meet the needs of animals for which it was designated, the act provides that the agency may approve another application for the same drug in the same dosage form for the same intended use. Proposed § 516.36 provides a procedure whereby the agency would notify the approved MUMS-designated drug sponsor of the possible insufficiency of supply and would request, within a specified time, that the sponsor provide in writing information and data regarding how the sponsor can assure the availability of sufficient quantities of the drug, or consent to the approval of other marketing applications.

Following evaluation of the submitted information, the agency would issue an order with findings and conclusions, either reaffirming or terminating the MUMS-drug designation and the associated exclusive marketing rights. Any such order which the agency issues would constitute final agency action. In the event the agency's decision is to terminate the MUMS-drug designation and the associated exclusive marketing rights, FDA may approve any number of applications for the same drug, in the same dosage form, for the same intended use, even if the additional sponsors cannot themselves assure the availability of sufficient quantities of the MUMS drug in question.

Once designation and exclusive marketing rights are terminated for failure to ensure the availability of adequate supplies, they cannot be restored even if the sponsor losing these privileges is later able to assure the availability of adequate supplies. It would be unreasonable to expect a second sponsor to invest in drug development to fill a gap if it could be shut out of the market at any time that the original sponsor could assure adequate supplies.

O. Availability for Public Disclosure of Data and Information in Requests and Applications (Proposed § 516.52)

Proposed § 516.52 provides rules for public disclosure of information. The agency recognizes that designation requests will contain confidential commercial information and, indeed, that the very existence of a MUMS-drug designation request may itself be confidential commercial information. In addition, a request for MUMS-drug designation is, in most instances, supported by information that will be incorporated into a sponsor's application for conditional approval or approval.

For all these reasons, proposed § 516.52(a) provides that unless previously publicly disclosed or acknowledged, FDA will not make public the existence of any pending MUMS-drug designation request prior to such time as FDA takes final action on the request. Proposed § 516.52(b) provides that, irrespective of whether the existence of a pending request for designation has been publicly disclosed or acknowledged, no data or information in the request are available for public disclosure.

Upon final FDA action on a request for designation, proposed § 516.52(c) provides that FDA will determine the public availability of data and information in the designation request in accordance with part 20 (21 CFR part 20) and other applicable statutes and regulations. Under proposed § 516.52(d), via reference to proposed § 516.28, FDA will make a cumulative list of all MUMS-drug designations available to the public and update it periodically. Under proposed § 516.28, the list will contain the following information regarding each MUMS-designated drug: The name and address

of the sponsor; the generic name and trade name, if any, of the drug; the date of granting MUMS-drug designation; the dosage form; and the species and intended use of the drug. In accordance with proposed § 516.29, FDA will give public notice of the termination of all MUMS-drug designations.

III. Conforming Changes

FDA is proposing to revise the definition of ''sponsor'' currently appearing in § 510.3 (21 CFR 510.3) to be consistent with the definition of ''sponsor'' proposed in the MUMS regulations in proposed § 516.3. The agency has recognized for some time that the scope of the definition in § 510.3 is overly narrow. It is inconsistent with one of the major subparts of part 510, Subpart G–Sponsors of Approved Applications, in failing to recognize that persons submitting and receiving approval for NADAs are also considered sponsors. The agency is taking this opportunity to resolve this long-standing inconsistency.

FDA is also proposing conforming changes in its regulations by removing § 514.1(d). The definitions under § 514.1(d)(1) were redefined by Congress in the MUMS act and are further clarified under proposed § 516.3. The provisions of § 514.1(d)(2) regarding the availability of guidance relating to MUMS drugs are now covered under FDA's good guidance practices in 21 CFR 10.115.

FDA also proposes to add a cross-reference to the MUMS designation records to 21 CFR 20.100, which lists regulations on the availability of specific categories of FDA records.

IV. Legal Authority

FDA's authority for issuing this proposed rule is provided by the Minor Use and Minor Species Animal Health Act of 2004 (21 U.S.C. 360ccc *et seq.*). When Congress passed the MUMS act, it directed FDA to publish implementing regulations (see 21 U.S.C. 360ccc note). In the context of the MUMS act, the statutory requirements of section 573 of the act, along with section 701(a) of the act (21 U.S.C. 371(a)) provide authority for this proposed rule. Section 701(a) authorizes the agency to issue regulations for the efficient enforcement of the act.

V. Analysis of Economic Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities.

FDA tentatively finds that the proposed rule does not constitute an economically significant regulatory action as defined in 3(f)(1) of Executive Order 12866. We believe that the annual impacts will not exceed $100 million since by its very nature the rule applies to animal drugs that have a very small market. Similarly, the administrative costs are unlikely to have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount. As such, no further analysis of anticipated costs and benefits is required by the Unfunded Mandates Reform Act of 1995.

The intention of this proposed rule, and therefore its benefit, is the creation of a system that would stimulate the development and marketing of animal drugs for rare diseases in major species and diseases found in minor species in the United States, which would otherwise not be economically viable under current market conditions. The countervailing cost, or risk of this proposed rule, would be the possibility of limited competition for approved drugs for a minor use drug indication or in a minor species drug due to the granting of the 7-year exclusive marketing right.

In addition to the benefit-risk tradeoff mentioned previously, there would be additional administrative costs for those companies seeking the MUMS designation for an NADA. We estimate that the designation request would require about 16 hours of preparation by a regulatory affairs official. At a benefit adjusted wage rate of almost $48 per hour for these employees, each request would have administrative costs of about $760.[1] We estimate that about 15 separate sponsors would each annually submit, on average, 5 MUMS-designation requests. Administrative costs for these actions would total about $57,300.

The agency is also proposing in § 516.22 that foreign sponsors requesting designation, do so through a permanent-resident U.S. agent. This is consistent with the current requirements of § 514.1(a) because requests for MUMS designation will ultimately be submitted to an NADA file. The agency does not expect to receive many requests for designation from foreign sponsors, and estimates that number at less than one per year. As such, the agency has not quantified the cost of this provision but believes it would be negligible.

Amendments made to existing designations are expected to occur infrequently. We estimate that three amendments will be filed annually, requiring about 2 hours of preparation. At the same wage rate, this would cost an additional $300. Sponsors may also transfer sponsorship of a MUMS-designated drug or terminate the designation. We estimate that these activities would result in only 3 additional hours of administrative costs annually, totaling $150. The preparation of the annual report that would be required for each MUMS-designated drug is estimated to take about 2 hours. In the first year, this would result in another 150 hours of administrative costs, or about $7,200. FDA notifications to sponsors concerning insufficient quantities of approved MUMS-designated drugs are expected to be rare, about once each year. Sponsor responses are estimated to take 3 hours, for a cost of $150.

Assuming a sponsor chooses to seek the MUMS designation for its NADA, total administrative costs for this proposed rule are estimated at about $65,000 in the first year, and to increase each year thereafter due to the annual reporting requirements.

Regulatory Flexibility Analysis

1. Small Business Impacts

The Regulatory Flexibility Act requires agencies to prepare a regulatory flexibility analysis if a rule is expected to have a significant economic impact

[1] 2000 National Industry-Specific Occupational Employment and Wage Estimates, U.S. Department of Labor, Bureau of Labor Statistics (*http://www.bls.gov/oes/2000/oesi3_283.htm*).

on a substantial number of small entities. Although we believe it is unlikely that significant economic impacts would occur, the following along with other sections of this preamble constitute the initial regulatory flexibility analysis.

One requirement of the Regulatory Flexibility Act is a succinct statement of any objectives of the rule. As stated previously in this analysis, with this proposed rule the agency intends to create a system, provided for by statute, that would stimulate the development and marketing of animal drugs for rare diseases in major species and diseases found in minor species in the United States, which would otherwise not be economically viable under current market conditions.

The Regulatory Flexibility Act also requires a description of the small entities that would be affected by the rule, and an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) defines the criteria for small businesses using the North American Industrial Classification System (NAICS). For pharmaceutical preparation manufacturers (NAICS number 325412), SBA defines small businesses as those with less than 750 employees. Census data shows that 723 companies with 901 establishments represent this category.[2] While about two-thirds of the establishments would be considered small using the SBA criteria, the agency acknowledges that many requests for MUMS designation would likely be received from multi-establishment companies that exceed the 750-employee limit on small businesses. Nonetheless, the cost of submitting a single request represents only about 0.1 percent of the revenues of the smallest set of establishments (those with one to four employees), and much smaller revenue percentages of all larger establishments. The agency believes that these costs would not represent a significant economic impact on these firms.

All of the costs described previously in this document would be incurred by any small business that applies for MUMS designation. These include costs for request preparation, amendments to designations, preparing annual reports, and responding to FDA notifications of insufficient quantities. The firms submitting requests for MUMS designation are expected to already have the necessary administrative personnel with the skills required to prepare the requests and fulfill reporting requirements as identified previously in this document.

2. Analysis of Alternatives

The Regulatory Flexibility Act requires that the agency consider any alternatives to the proposed rule that would accomplish the objective while minimizing significant impacts of the proposed rule. As stated previously, the agency believes that the proposed rule, due to the relatively small size of the costs, would not be likely to impose significant economic impacts on small businesses. As such, the agency believes the proposed rule achieves the objective with minimal costs to industry.

The statute that creates this system, Public Law 108–282, does not provide the agency a great deal of flexibility in the implementing regulations, such as in determining the length of the exclusivity period or granting an exclusivity to more than one animal drug without regard to sameness of drug, dosage form, and intended use. The agency did consider, however, applying an explicit threshold number of animals of each major species as the upper bound of disease incidence in the definition of ''minor use'' of animal drugs. The agency determined that the data needed to develop these estimates would not be available in time for the publication date of this proposed rule as mandated by statute. The agency has therefore decided to address this issue in a later rulemaking, and instead consider the acceptability of each request for designation as a minor use animal drug on a case-by-case basis as provided for in the Senate report concerning the legislation.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB), under the Paperwork reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions follows with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques and other forms of information technology.

Title: Designated New Animal Drugs for Minor Use and Minor Species 21 CFR Part 516

Description: The Minor Use and Minor Species (MUMS) Animal Health Act of 2004 amended the Federal Food, Drug, and Cosmetic Act (the act) to authorize FDA to establish new regulatory procedures intended to make more medications legally available to veterinarians and animal owners for the treatment of minor animal species as well as uncommon diseases in major animal species. This legislation provides incentives designed to help pharmaceutical companies overcome the financial burdens they face in providing limited-demand animal drugs. These incentives are only available to sponsors whose drugs are ''MUMS-designated'' by FDA. Minor use drugs are drugs for use in major species (cattle, horses, swine, chickens, turkeys, dogs, and cats) that are needed for diseases that occur in only a small number of animals either because they occur infrequently or in limited geographic areas. Minor species are all animals other than the major species, for example, zoo animals, ornamental fish, parrots, ferrets, and guinea pigs. Some animals of agricultural importance are also minor species. These include animals such as sheep, goats, catfish, and honeybees. Participation in the MUMS program is completely optional for drug sponsors so the associated paperwork only applies to those sponsors who request and are subsequently granted ''MUMS designation.'' The proposed rule will specify the criteria and procedures for requesting MUMS designation as well as the annual reporting requirements for MUMS designees.

Under the proposed new part, § 516.20 provides requirements on the content and format of a request for MUMS-drug designation, § 516.26 provides requirements for amending MUMS-drug designation, provisions for change in sponsorship of MUMS-drug designation can be found under § 516.27, under § 516.29 are provisions for termination of MUMS-drug designation, under § 516.30 are requirements for annual reports from sponsor(s) of MUMS-designated drugs, and under § 516.36 are provisions for

[2] 2002 Economic Census, U.S. Census Bureau, Manufacturing Industry Series, Pharmaceutical Preparation Manufacturing, Table 4.

insufficient quantities of MUMS-designated drugs.

Description of Respondents: Pharmaceutical companies that sponsor new animal drugs.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
516.20	15	5	75	16	1,200
516.26	3	1	3	2	6
516.27	1	1	1	1	1
516.29	2	1	2	1	2
516.30	15	5	75	2	150
516.36	1	1	1	3	3
Total					1,362

[1] There are no capital or operating and maintenance costs associated with this collection of information.

The burden estimate for this reporting requirement was derived in our Office of Minor Use and Minor Species Animal Drug Development by extrapolating the current INAD/NADA reporting requirements for similar actions by this same segment of the regulated industry and from previous interactions with the minor use/minor species community.

As required by section 3504(h) of the PRA, FDA has submitted a copy of this proposed rule to OMB for its review of these information collection provisions. Other organizations and individuals desiring to submit comments on the information collection requirements should send their comments to OMB. Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

VII. Environmental Impact

We have carefully considered the potential environmental impacts of this proposed rule and determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment, nor an environmental impact statement is required.

VIII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule does not contain policies 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. Accordingly, we have tentatively concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

IX. Comments

You may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Please submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Identify your comments with the docket number found in brackets in the heading of this document. You may view received comments in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 514 and 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 Chapter I be amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

2. Amend § 20.100 by adding paragraph (c)(43) to read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

* * * * *

(c) * * *

(43) Minor-use or minor-species (MUMS) drug designations, in § 516.52 of this chapter.

PART 510—NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

4. Amend § 510.3 by revising paragraph (k) to read as follows:

§ 510.3 Definitions and interpretations.

* * * * *

(k) *Sponsor* means the person requesting designation for a minor-use or minor-species drug as defined in part

516 of this chapter, who must be the real party in interest of the development and the intended or actual production and sales of such drug (in this context, the sponsor may be an individual, partnership, organization, or association). *Sponsor* also means the person responsible for an investigation of a new animal drug. In this context, the sponsor may be an individual, partnership, corporation, or Government agency or may be a manufacturer, scientific institution, or an investigator regularly and lawfully engaged in the investigation of new animal drugs. *Sponsor* also means the person submitting or receiving approval for a new animal drug application (in this context, the sponsor may be an individual, partnership, organization, or association). In all contexts, the sponsor is responsible for compliance with applicable provisions of the act and regulations.

PART 514—NEW ANIMAL DRUG APPLICATIONS

5. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e, 381.

§ 514.1 [Amended]

6. Amend § 514.1 by removing paragraph (d).

7. Add part 516 to read as follows:

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

Subpart A—General Provisions

Sec.
516.1 Scope.
516.2 Purpose.
516.3 Definitions.

Subpart B—Designation of a Minor Use or Minor Species New Animal Drug

Sec.
516.11 Scope of this subpart.
516.12 Purpose.
516.13 Definitions.
516.14 Submission of requests for designation.
516.16 Eligibility to request designation.
516.20 Content and format of a request for MUMS-drug designation.
516.21 Documentation of minor use status.
516.22 Permanent-resident U.S. agent for foreign sponsor.
516.23 Timing of requests for MUMS-drug designation.
516.24 Granting MUMS-drug designation.
516.25 Refusal to grant MUMS-drug designation.
516.26 Amendment to MUMS-drug designation.
516.27 Change in sponsorship.
516.28 Publication of MUMS-drug designations.
516.29 Termination of MUMS-drug designation.
516.30 Annual reports for a MUMS-designated drug.
516.31 Scope of MUMS-drug exclusive marketing rights.
516.34 FDA recognition of exclusive marketing rights.
516.36 Insufficient quantities of MUMS-designated drugs.
516.52 Availability for public disclosure of data and information in requests and applications.

Subpart C—[Reserved]

Subpart D—[Reserved]

Authority: 21 U.S.C. 360ccc–2, 371.

Subpart A—General Provisions

§ 516.1 Scope.

(a) This part implements section 573 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ccc–2) and contains the following subparts:

(1) Subpart A—General Provisions.

(2) Subpart B—Designation of a Minor Use or Minor Species New Animal Drug.

(3) Subpart C—[Reserved]

(4) Subpart D—[Reserved]

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

§ 516.2 Purpose.

This part establishes standards and procedures for implementing section 573 of the act, including designation of minor use or minor species new animal drugs and associated exclusive marketing rights.

§ 516.3 Definitions.

(a) The definitions and interpretations contained in section 201 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321) apply to those terms when used in this part.

(b) The following definitions of terms apply to all subparts of part 516:

Active moiety means the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the pharmacological action of the drug substance.

Functionally superior means that a drug has been shown to provide a significant therapeutic or physiologic advantage over that provided by a conditionally-approved or approved MUMS drug, that is otherwise the same drug, in one or more of the following ways:

(i) The drug has been shown to be more effective, as assessed by effect on a clinically meaningful endpoint in adequate and well-controlled clinical trials, than a conditionally approved or approved MUMS drug, that is otherwise the same drug. Generally, this would represent the same kind of evidence needed to support a comparative effectiveness claim for two different drugs; in most cases, direct comparative clinical trials will be necessary; or

(ii) The drug has been shown to be safer than a conditionally-approved or approved MUMS drug, that is otherwise the same drug, in a substantial portion of the target population, for example, by the elimination of an ingredient or contaminant that is associated with relatively frequent adverse effects. In some cases, direct comparative clinical trials will be necessary.

Infrequently, as used in the minor use definition, means a disease or condition that is uncommon or that occurs only sporadically.

Limited geographical areas, as used in the minor use definition, means regions of the United States distinguished by physical, chemical, or biological factors that limit the distribution of a disease or condition.

Major species means cattle, horses, swine, chickens, turkeys, dogs, and cats.

Minor species means animals, other than humans, that are not major species.

Minor use means the intended use of a drug in a major species for an indication that occurs infrequently and in only a small number of animals or in limited geographical areas and in only a small number of animals annually.

MUMS drug means a new animal drug, as defined in section 201 of the act, intended for a minor use or for use in a minor species.

Same dosage form means the same as one of the dosage forms specified in the following parts of this chapter:

(i) Part 520: Oral dosage form new animal drugs (excluding use in animal feeds as specified in part 558 of this chapter).

(ii) Part 522: Implantation or injectable dosage form new animal drugs.

(iii) Part 524: Ophthalmic and topical dosage form new animal drugs.

(iv) Part 526: Intramammary dosage forms.

(v) Part 529: Certain other dosage form new animal drugs.

(vi) Part 558: New animal drugs for use in animal feeds.

Same drug means a MUMS drug for which designation, indexing, or conditional approval is sought that meets the following criteria:

(i) If it is a MUMS drug composed of small molecules and contains the same active moiety as a prior designated,

conditionally-approved, or approved MUMS drug, even if the particular ester or salt (including a salt with hydrogen or coordination bonds) or other noncovalent derivative such as a complex, chelate or clathrate is not the same, it is considered the same drug; except that, if the prior MUMS drug is conditionally approved or approved and the second MUMS drug is shown to be functionally superior to the conditionally-approved or approved MUMS drug for the same intended use, it is not considered the same drug.

(ii) If it is a MUMS drug composed of large molecules (macromolecules) and contains the same principal molecular structural features (but not necessarily all of the same structural features) as a prior designated, conditionally-approved, or approved MUMS drug, it is considered the same drug; except that, if the prior MUMS drug is conditionally approved or approved and the second MUMS drug is shown to be functionally superior to the conditionally approved or approved MUMS drug for the same intended use, it is not considered the same drug. This criterion will be applied as follows to different kinds of macromolecules:

(A) Two protein drugs would be considered the same if the only differences in structure between them were due to post-translational events or infidelity of translation or transcription or were minor differences in amino acid sequence; other potentially important differences, such as different glycosylation patterns or different tertiary structures, would not cause the drugs to be considered different unless the subsequent drug is shown to be functionally superior.

(B) Two polysaccharide drugs would be considered the same if they had identical saccharide repeating units, even if the number of units were to vary and even if there were postpolymerization modifications, unless the subsequent drug is shown to be functionally superior.

(C) Two polynucleotide drugs consisting of two or more distinct nucleotides would be considered the same if they had an identical sequence of purine and pyrimidine bases (or their derivatives) bound to an identical sugar backbone (ribose, deoxyribose, or modifications of these sugars), unless the subsequent drug is shown to be functionally superior.

(D) Closely related, complex partly definable drugs with similar pharmacologic intent would be considered the same unless the subsequent drug is shown to be functionally superior.

Same intended use means an intended use of a MUMS drug, for which designation, indexing, or conditional approval is sought, that is determined to be the same as (or not different from) a previously designated, conditionally-approved, or approved intended use of a MUMS drug. Same intended use is established by comparing two intended uses and not by simply comparing the specific language by means of which the intent is established in labeling in accordance with the following criteria:

(i) Two intended uses are considered the same if one of the intended uses falls completely within the scope of the other.

(ii) For intended uses associated with diseases or conditions with multiple causative organisms, two intended uses are not considered the same when they involve different causative organisms or different subsets of causative organisms of that disease or condition when the causative organisms involved can reliably be shown to be clinically significant causes of the disease or condition.

(iii) Two intended uses of a drug are not considered the same if they involve different intended species or different definable subpopulations (including ''production classes'') of a species.

Sponsor means the person requesting designation for a MUMS drug who must be the real party in interest of the development and the intended or actual production and sales of such drug (in this context, the sponsor may be an individual, partnership, organization, or association). *Sponsor* also means the person responsible for an investigation of a new animal drug (in this context, the sponsor may be an individual, partnership, corporation, or Government agency or may be a manufacturer, scientific institution, or an investigator regularly and lawfully engaged in the investigation of new animal drugs). *Sponsor* also means the person submitting or receiving approval for a new animal drug application (in this context, the sponsor may be an individual, partnership, organization, or association). In all contexts, the sponsor is responsible for compliance with applicable provisions of the act and regulations.

Subpart B—Designation of a Minor Use or Minor Species New Animal Drug

§ 516.11 Scope of this subpart.

This subpart implements section 573 of the act. Specifically, this subpart sets forth the procedures and requirements for submissions to FDA of requests for designation of a new animal drug for a minor use or a minor species.

§ 516.12 Purpose.

This subpart establishes standards and procedures for determining eligibility for designation and the associated incentives and benefits described in section 573 of the act, including a 7-year period of exclusive marketing rights.

§ 516.13 Definitions.

The following definitions of terms apply only in the context of subpart B of this part:

Director means the Director of the Office of Minor Use and Minor Species Animal Drug Development of the FDA Center for Veterinary Medicine.

Intended use means the intended treatment, control or prevention of a disease or condition, or the intention to affect the structure or function of the body of animals within an identified species, subpopulation of a species, or collection of species.

MUMS-designated drug means a new animal drug, as defined in section 201 of the act, intended for a minor use or for use in a minor species that has been designated under section 573 of the act.

MUMS-drug exclusive marketing rights or *exclusive marketing rights* means that, effective on the date of FDA conditional approval or approval as stated in the approval letter of an application for a MUMS-designated drug, no conditional approval or approval will be given to a subsequent application for the same drug, in the same dosage form, for the same intended use for 7 years, except as otherwise provided by law or in this subpart.

§ 516.14 Submission of requests for designation.

All correspondence relating to a request for designation of a MUMS drug must be addressed to the Director of the Office of Minor Use and Minor Species Animal Drug Development. Submissions not including all elements specified in § 516.20 will be returned to the sponsor without review.

§ 516.16 Eligibility to request designation.

The person requesting designation must be the sponsor and the real party in interest of the development and the intended or actual production and sales of the drug or the permanent-resident U.S. agent for such a sponsor.

§ 516.20 Content and format of a request for MUMS-drug designation.

(a) A sponsor that submits a request for designation of a new animal drug intended for a minor use or minor

species must submit each request in the form and containing the information required in paragraph (b) of this section. While a request for designation may involve multiple intended uses, each request for designation must constitute a separate submission. A sponsor may request MUMS-drug designation of a previously unapproved drug, or a new intended use or dosage form for an already conditionally-approved or approved drug. Only one sponsor may receive MUMS-drug designation of the same drug, in the same dosage form, for the same intended use.

(b) A sponsor must submit two copies of a completed, dated, and signed request for designation that contains the following information:

(1) A request for designation of a new animal drug for a minor use or use in a minor species, which must be specific.

(2) The name and address of the sponsor; the name of the sponsor's primary contact person and/or permanent-resident U.S. agent including title, address, and telephone number; the generic and trade name, if any, of the drug; and the name and address of the source of the drug.

(3) A description of the proposed intended use for which the drug is being or will be investigated.

(4) A description of the drug and dosage form.

(5) A discussion of the scientific rationale for the intended use of the drug; specific reference, including date(s) of submission, to all data from nonclinical laboratory studies, clinical investigations, copies of pertinent unpublished and published papers, and other relevant data that are available to the sponsor, whether positive, negative, or inconclusive.

(6) A specific description of the product development plan for the drug, its dosage form, and its intended use.

(7) If the drug is intended for a minor use in a major species, documentation in accordance with § 516.21, with appended authoritative references, to demonstrate that such use is a minor use.

(8) A statement that the sponsor submitting the request is the real party in interest of the development and the intended or actual production and sales of the product.

(9) A statement that the sponsor acknowledges that, upon granting a request for MUMS designation, FDA will make information regarding the designation publicly available as specified in § 516.28.

§ 516.21 Documentation of minor use status.

So that FDA can determine whether a drug qualifies for MUMS-drug designation as a minor use in a major species under section 573 of the act, the sponsor shall include in its request to FDA for MUMS-drug designation under § 516.20 documentation demonstrating that the use is limited to a small number of animals (annualized). This documentation must include the following information:

(a) The estimated total number of animals to which the drug could potentially be administered on an annual basis for the treatment, control, or prevention of the disease or condition for which the drug is being developed, including animals administered the drug as part of herd or flock treatment, together with a list of the sources (including dates of information provided and literature citations) for the estimate.

(b) If the drug is under development for only a subset of the estimated total number of animals to which the drug could potentially be administered on an annual basis for the treatment, control, or prevention of the disease or condition for which the drug is being developed, including animals administered the drug as part of herd or flock treatment, a demonstration that administration of the drug to animals other than the subset is not medically justified. The sponsor must also include a list of the sources (including dates of information provided and literature citations) for the justification that administration of the drug to animals other than the targeted subset is medically inappropriate.

(c) An estimate of the potential market associated with the total number of animals established in paragraph (a) of this section compared to an estimate of the development costs of the proposed drug, in the proposed dosage form, for the proposed intended use.

§ 516.22 Permanent-resident U.S. agent for foreign sponsor.

Every foreign sponsor that seeks MUMS-drug designation shall name a permanent resident of the United States as the sponsor's agent upon whom service of all processes, notices, orders, decisions, requirements, and other communications may be made on behalf of the sponsor. Notifications of changes in such agents or changes of address of agents should preferably be provided in advance, but not later than 60 days after the effective date of such changes. The permanent-resident U.S. agent may be an individual, firm, or domestic corporation and may represent any number of sponsors. The name and address of the permanent-resident U.S. agent shall be provided to the Director of the Office of Minor Use and Minor Species Animal Drug Development.

§ 516.23 Timing of requests for MUMS-drug designation.

A sponsor may request MUMS-drug designation at any time in the drug development process prior to the submission of an application for either conditional approval or approval of the MUMS drug for which designation is being requested.

§ 516.24 Granting MUMS-drug designation.

(a) FDA may grant the request for MUMS-drug designation if none of the reasons described in § 516.25 for refusal to grant such a request apply.

(b) When a request for MUMS-drug designation is granted, FDA will notify the sponsor in writing and will give public notice of the MUMS-drug designation in accordance with § 516.28.

§ 516.25 Refusal to grant MUMS-drug designation.

(a) FDA will refuse to grant a request for MUMS-drug designation if any of the following reasons apply:

(1) The drug is not intended for use in a minor species or FDA determines that there is insufficient evidence to demonstrate that the drug is intended for a minor use in a major species.

(2) The drug is the same drug in the same dosage form for the same intended use as one that already has a MUMS-drug designation but has not yet been conditionally approved or approved.

(3) The drug is the same drug in the same dosage form for the same intended use as one that is already conditionally approved or approved. A drug that FDA has found to be functionally superior is not considered the same drug as an already conditionally-approved or approved drug even if it is otherwise the same drug in the same dosage form for the same intended use.

(4) The sponsor has failed to provide:

(i) A credible scientific rationale in support of the intended use,

(ii) Sufficient information about the product development plan for the drug, its dosage form, and its intended use to establish that adherence to the plan can lead to successful drug development in a timely manner, and

(iii) Any other information required under § 516.20.

(b) FDA may refuse to grant a request for MUMS-drug designation if the request for designation contains an untrue statement of material fact or omits material information.

§ 516.26 Amendment to MUMS-drug designation.

(a) At any time prior to conditional approval or approval of an application for a MUMS-designated drug, the sponsor may apply for an amendment to the designated intended use if the proposed change is due to new and unexpected findings in research on the drug, information arising from FDA recommendations, or other unforeseen developments.

(b) FDA will grant the amendment if it finds:

(1) That the initial designation request was made in good faith;

(2) That the amendment is intended to make the MUMS-drug designated intended use conform to the results of new and unexpected findings in research on the drug, information arising from FDA recommendations, or other unforeseen developments; and

(3) In the case of a minor use, that as of the date of the submission of the amendment request, the amendment would not result in the intended use of the drug no longer being considered a minor use.

§ 516.27 Change in sponsorship.

(a) A sponsor may transfer sponsorship of a MUMS-designated drug to another person. A change of sponsorship will also transfer the designation status of the drug which will remain in effect for the new sponsor subject to the same conditions applicable to the former sponsor provided that at the time of a potential transfer, the new and former sponsors submit the following information in writing and obtain permission from FDA:

(1) The former sponsor shall submit a letter to FDA that documents the transfer of sponsorship of the MUMS-designated drug. This letter shall specify the date of the transfer. The former sponsor shall also certify in writing to FDA that a complete copy of the request for MUMS-drug designation, including any amendments to the request, and correspondence relevant to the MUMS-drug designation, has been provided to the new sponsor.

(2) The new sponsor shall submit a letter or other document containing the following information:

(i) A statement accepting the MUMS-drug designated file or application;

(ii) The date that the change in sponsorship is intended to be effective;

(iii) A statement that the new sponsor has a complete copy of the request for MUMS-drug designation, including any amendments to the request and any correspondence relevant to the MUMS-drug designation;

(iv) A statement that the new sponsor understands and accepts the responsibilities of a sponsor of a MUMS-designated drug established elsewhere in this subpart;

(v) The name and address of a new primary contact person or permanent-resident U.S. agent; and

(vi) Evidence that the new sponsor is capable of actively pursuing approval with due diligence.

(b) No sponsor may relieve itself of responsibilities under the act or under this subpart by assigning rights to another person without:

(1) Assuring that the new sponsor will carry out such responsibilities; and

(2) Obtaining prior permission from FDA.

§ 516.28 Publication of MUMS-drug designations.

FDA will periodically update a publicly available list of MUMS-designated drugs. This list will be placed on file at the FDA Division of Dockets Management, and will contain the following information for each MUMS-designated drug:

(a) The name and address of the sponsor;

(b) The generic name and trade name, if any, of the drug;

(c) The dosage form of the drug;

(d) The species and the proposed intended use for which MUMS-drug designation was granted; and

(e) The date designation was granted.

§ 516.29 Termination of MUMS-drug designation.

(a) The sponsor of a MUMS-designated drug must notify FDA of any decision to discontinue active pursuit of conditional approval or approval of such MUMS drug. FDA must terminate the designation upon such notification.

(b) A conditionally-approved or approved MUMS-designated drug sponsor must notify the FDA at least 1 year before it intends to discontinue the manufacture of such MUMS drug. FDA must terminate designation upon such notification.

(c) MUMS designation shall terminate upon the expiration of any applicable period of exclusive marketing rights under this subpart.

(d) FDA may terminate designation if it independently determines that the sponsor is not actively pursuing conditional approval or approval with due diligence. At a minimum, due diligence must be demonstrated by:

(1) Submission of annual progress reports in a timely manner in accordance with § 516.30 that demonstrate that the sponsor is progressing in accordance with the drug development plan submitted to the agency under § 516.20 and

(2) Compliance with all applicable requirements of part 511 of this chapter.

(e) Designation of a conditionally-approved or approved MUMS-designated drug and the associated exclusive marketing rights may be terminated if the sponsor is unable to provide sufficient quantities of the drug to meet the needs for which it is designated.

(f) FDA may also terminate MUMS-drug designation for any drug if the agency finds that:

(1) The request for designation contained an untrue statement of material fact; or

(2) The request for designation omitted material information required by this subpart; or

(3) FDA subsequently finds that the drug in fact had not been eligible for MUMS-drug designation at the time of submission of the request;

(4) The same drug, in the same dosage form, for the same intended use becomes conditionally approved or approved for another sponsor; or

(5) FDA withdraws the conditional approval or approval of the application for the new animal drug.

(g) For a conditionally-approved or approved drug, termination of MUMS-drug designation also terminates the sponsor's exclusive marketing rights for the drug but does not withdraw the conditional approval or approval of the drug's application.

(h) Where a drug has been MUMS-designated for a minor use in a major species, its designation will not be terminated on the grounds that the number of animals to which the drug could potentially be administered on an annual basis for the treatment, control, or prevention of the disease or condition for which the drug is being developed, including animals administered the drug as part of herd or flock treatment, subsequently increases.

(i) When a MUMS-drug designation is terminated, FDA will notify the sponsor in writing and will give public notice of the termination of the MUMS-drug designation.

§ 516.30 Annual reports for a MUMS-designated drug.

Within 14 months after the date on which a MUMS drug is granted designation and annually thereafter until approval, the sponsor of a MUMS-designated drug shall submit a brief progress report on the drug to the investigational new animal drug file addressed to the Director of the Office of Minor Use and Minor Species Animal Drug Development that includes the following information:

(a) A short account of the progress of drug development including a description of studies initiated, ongoing, and completed, and a short summary of the status or results of such studies;

(b) A description of the investigational plan for the coming year, as well as any anticipated difficulties in development, testing, and marketing; and

(c) A brief discussion of any changes that may affect the MUMS-designated drug status of the product. For example, situations in which testing data demonstrate that the proposed intended use is inappropriate due to unexpected issues of safety or effectiveness.

§ 516.31 Scope of MUMS-drug exclusive marketing rights.

(a) After conditional approval or approval of an application for a MUMS-designated drug in the dosage form and for the intended use for which MUMS-drug designation has been granted, FDA will not conditionally approve or approve another application or abbreviated application for the same drug in the same dosage form for the same intended use before the expiration of 7 years after the date of conditional approval or approval as stated in the approval letter from FDA, except that such an application can be conditionally approved or approved sooner if, and at such time as, any of the following occurs:

(1) FDA terminates the MUMS-drug designation and associated exclusive marketing rights under § 516.29; or

(2) FDA withdraws or proposes to withdraw the conditional approval or approval of the application for the drug for any reason; or

(3) The sponsor with exclusive marketing rights provides written consent to FDA to conditionally approve or approve another application before the expiration of 7 years; or

(4) The sponsor fails to assure a sufficient quantity of the drug in accordance with section 573 of the act and § 516.36.

(b) If an application for a MUMS drug cannot be approved until the expiration of the period of exclusive marketing of a MUMS-designated drug, FDA will so notify the sponsor in writing.

§ 516.34 FDA recognition of exclusive marketing rights.

(a) FDA will send the sponsor (or the permanent-resident U.S. agent, if applicable) timely written notice recognizing exclusive marketing rights when an application for a MUMS-designated drug has been conditionally approved or approved. The written notice will inform the sponsor of the requirements for maintaining MUMS-designated drug exclusive marketing rights for the full 7-year term. This notice will generally be contained in the letter conditionally approving or approving the application.

(b) When an application is conditionally approved or approved for a MUMS-designated drug that qualifies for exclusive marketing rights, FDA will publish this information in the **Federal Register** at the time of the conditional approval or approval. This notice will generally be contained in the notice of conditional approval or approval of the application.

§ 516.36 Insufficient quantities of MUMS-designated drugs.

(a) Under section 573 of the act, whenever the FDA has reason to believe that sufficient quantities of a conditionally-approved or approved, MUMS-designated drug to meet the needs for which the drug was designated cannot be assured by the sponsor, the FDA will so notify the sponsor of this possible insufficiency and will offer the sponsor the following options, one of which must be exercised by a time that FDA specifies:

(1) Provide FDA information and data regarding how the sponsor can assure the availability of sufficient quantities of the MUMS-designated drug within a reasonable time to meet the needs for which the drug was designated; or

(2) Provide FDA in writing the sponsor's consent for the conditional approval or approval of other applications for the same drug before the expiration of the 7-year period of exclusive marketing rights.

(b) If, within the time that FDA specifies, the sponsor fails to consent to the conditional approval or approval of other applications and if FDA finds that the sponsor has not shown that it can assure the availability of sufficient quantities of the MUMS-designated drug to meet the needs for which the drug was designated, FDA will issue a written order terminating designation of the MUMS drug and the associated exclusive marketing rights. This order will state FDA's findings and conclusions and will constitute final agency action. An order terminating designation and associated exclusive marketing rights may issue whether or not there are other sponsors that can assure the availability of alternative sources of supply. Such an order will not withdraw the conditional approval or approval of an application. Once terminated under this section, neither designation, nor exclusive marketing rights may be reinstated.

§ 516.52 Availability for public disclosure of data and information in requests.

(a) FDA will not publicly disclose the existence of a request for MUMS-drug designation under section 573 of the act prior to final FDA action on the request unless the existence of the request has been previously publicly disclosed or acknowledged.

(b) Whether or not the existence of a pending request for designation has been publicly disclosed or acknowledged, no data or information in the request are available for public disclosure prior to final FDA action on the request.

(c) Except as provided in paragraph (d) of this section, upon final FDA action on a request for designation, the public availability of data and information in the request will be determined in accordance with part 20 of this chapter and other applicable statutes and regulations.

(d) In accordance with § 516.28, FDA will make a cumulative list of all MUMS-drug designations available to the public and update such list periodically. In accordance with § 516.29, FDA will give public notice of the termination of all MUMS-drug designations.

Subpart C—[Reserved]

Subpart D—[Reserved]

Dated: August 31, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–19196 Filed 9–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 135

[Docket Nos. 2003P–0132 and 2000P–1491 (formerly 03P–0132 and 00P–1491)]

Frozen Desserts; Petition to Revoke Standards for Goat's Milk Ice Cream and Mellorine and to Amend Standards for Ice Cream and Frozen Custard, Sherbet, and Water Ices; Petition to Amend Standards for Parmesan and Reggiano Cheese

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the following two petitions have

been filed: A petition requesting that the agency revoke the standards of identity for goat's milk ice cream and mellorine, and amend the standards of identity for ice cream and frozen custard, sherbet, and water ices in numerous respects; and a petition requesting that the agency amend the standard of identity for parmesan and reggiano cheese to decrease the minimum curing time from 10 months to 6 months. The FDA is issuing an advance notice of proposed rulemaking (ANPRM) to request comments to determine whether the action proposed in the petitions would promote honesty and fair dealing in the interest of consumers.

DATES: Submit written or electronic comments by December 27, 2005.

ADDRESSES: You may submit comments, identified by Docket Nos. 2003P–0132 and 2000P–1491, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the Electronic Submissions portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No(s). or Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Catalina Ferré-Hockensmith, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

SUPPLEMENTARY INFORMATION:

I. The International Ice Cream Association (IICA) Petition

IICA submitted a citizen petition on March 31, 2003, requesting that FDA revoke the standards of identity in part 135 (21 CFR part 135) for goat's milk ice cream (§ 135.115) and mellorine (§ 135.130), amend the current standard of identity for ice cream and frozen custard (§ 135.110), amend the standard of identity for sherbet (§ 135.140), and amend the standard of identity for water ices (§ 135.160).

In its petition, IICA states that its proposed amendments to the frozen desserts standards of identity improve efficiency by bringing these standards of identity up to current technological standards. Specifically, IICA's proposed amendments to the frozen desserts regulations in part 135, establish definitions for the following terms: (1) Ultrapasteurized, (2) milk (to include filtered milk), (3) nonfat milk, (4) milk-derived protein, and (5) milk-derived ingredients. In addition, IICA's proposed ice cream and frozen custard standard would permit, among other things, the use of any safe and suitable milk-derived ingredients as well as milk from other animal sources and would require source declaration when milk other than cow's milk is used (e.g., goat, sheep). IICA's proposed amendments would also provide for ''alternate make'' procedures and would change the minimum requirements of fat and protein content. For frozen custard, French ice cream, and French custard ice cream, the IICA proposal provides for a minimum of 1.4 percent egg yolk. Further, IICA's proposed amendments would require the use of specific Association of Official Analytical Chemists International (AOAC) analytical methods for determination of fat and protein content. Finally, IICA's proposed amendments would provide that the manufacturer may determine whether a natural or artificial flavor provides the characterizing flavor for purposes of labeling and would provide for collective common or usual names for some milk-derived ingredients.

IICA also proposes that many of the proposed changes to the ice cream and frozen custard standard be applied to the sherbet standard. IICA's proposed amendments to the sherbet standard included allowing for use of the following: (1) Any safe and suitable milk-derived ingredients; (2) milk from animals other than cows, whose source would be reflected in the product name; (3) safe and suitable sweeteners; and (4) ''alternate make'' procedures. IICA also proposes minimum and/or maximum requirements for milk-derived protein, milkfat and fruit content.

IICA's proposed amendments to the water ices standard provide for the use of safe and suitable ingredients and optional fruit-characterizing ingredients and remove the requirement that the product is aerated or stirred while freezing.

FDA is publishing this document in accordance with section 701(e)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)(1)), which directs the Secretary of Health and Human Services to publish proposals made by petition to amend or repeal a dairy product food standard, as long as the petition includes reasonable grounds for the action requested, and to provide interested persons with an opportunity to present their views. FDA tentatively finds that IICA's petition presents reasonable grounds. Therefore, FDA requests comment on whether the actions proposed in the petition would promote honesty and fair dealing in the interest of consumers.

A. Grounds for the Suggested Changes for Ice Cream and Frozen Custard, Goat's Milk Ice Cream, Mellorine, Sherbet, and Water Ices Standards

IICA asserts that the proposed changes to the frozen desserts standards of identity would increase efficiency by reducing unnecessary regulatory burdens and would allow manufacturers to take advantage of new manufacturing and ingredient technologies. IICA states that these changes would allow manufacturers to reduce costs and to pass these savings on to consumers. IICA contends that the proposed changes would result in a finished product nutritionally equivalent to products manufactured according to the current standard; therefore, no economic harm or consumer deception would result from the proposed amendments. IICA also maintains that

the proposed amendments to the standards would reduce FDA's expenses because newly developed ingredients could be used without having to amend the standards for each change while still ensuring consumer health and safety.

IICA's proposed amendments to the ice cream and frozen custard and sherbet standards provide for the use of safe and suitable milk-derived ingredients rather than providing an extensive list of ingredients permitted as is done in the current standards. IICA asserts that this would streamline the current standards. Moreover, IICA notes that its proposed amendment to the ice cream and frozen custard standard, which provides for seven categories of milk derived ingredients to be declared on labels under common names, would allow manufacturers to adjust their formulas based on ingredient availability within each class of ingredients without the need to print new labels. In addition, IICA asserts, that because the nutritional profile of ice cream is based on a protein equivalent, consumers will not be deceived by the proposed categories because the final product will be nutritionally equivalent regardless of the individual ingredient within the class that is used.

In its petition, IICA proposes removing the maximum 25-percent restriction on whey solids in ice cream and frozen custard to allow for any combination of safe and suitable dairy-derived ingredients. IICA contends that, by removing the 25-percent cap on whey solids, more whey proteins can be used to satisfy the minimum protein requirement. In addition, IICA asserts that whey proteins have a higher nutritional value than other milk proteins and higher protein digestibility than milk.

Further, IICA proposes replacing the minimum nonfat milk solids requirements contained in the current ice cream and frozen custard and sherbet standards with a minimum milk-derived protein percentage based on the proportionate amount of fat in the foods. IICA contends that a milk-derived protein requirement is easier to measure, and thus, the requirement is easier to enforce than a minimum nonfat milk solids requirement.

In its petition, IICA proposes a new provision for ''alternate make'' in the manufacture of ice cream and frozen custard and sherbet. IICA states that the proposed amendment for an ''alternate make'' provision in certain frozen desserts is consistent with the alternate make provisions in cheese standards. IICA further states that the ''alternate make'' provision would be confined to those processes that produce a finished product that is equivalent to the product made by traditional procedures regarding physical, chemical (including nutritional) and organoleptic properties. IICA also states that including an ''alternate make'' provision would provide flexibility to use improvements in food technology in the manufacture of ice cream, frozen custard, and sherbet without having to amend the standard.

In its petition, IICA also proposes removing the current ice cream and frozen custard standard requirement regarding the amounts of fruits, fruit juice and nut meats present, at or below which an artificial flavor simulating a characterizing flavor is deemed the predominant flavor for purposes of naming the product. Also, IICA proposes changing the levels of fruit content in sherbet at or below which the artificial flavor is deemed to predominate over the fruit ingredient in characterizing the flavor of the product. IICA proposes changing these levels from a minimum of 2-percent for citrus sherbets, 6-percent for berry sherbets, and 10-percent for sherbets prepared with other fruits to a 2-percent minimum content for all fruits to allow greater flexibility in developing new and exotic flavors. IICA asserts that intense flavors, when used in combination with bland flavors, overpower the bland flavors if used at the 10-percent level currently required for sherbet prepared with fruits other than citrus and berry.

IICA also proposes to delete the standard for goat's milk ice cream and instead to provide for declaration of the source-animal for milk in ice cream when the milk is from an animal other than cow. IICA states that having separate standards of identity is unnecessarily duplicative and limits possibilities for the use of milk from other source animals.

In addition, IICA proposes to revoke the mellorine standard. IICA asserts that mellorine is not in great demand. IICA further states that, if the mellorine standard is revoked, frozen dairy desserts formulated by replacing milkfat with vegetable fat may still be manufactured but would be labeled with a common or usual name that is more descriptive, such as ''frozen dessert'' or ''frozen dairy dessert,'' if the milk solids predominate. IICA contends that these names would allow manufacturers more flexibility to address consumer demand and more accurately describe the product.

Finally, IICA proposes to provide for the use of safe and suitable ingredients in the water ices standard rather than providing an extensive list of ingredients permitted as is done in the current standard. IICA also proposes the use of optional fruit-characterizing ingredients in water ices.

B. Matters of Particular Interest to FDA Regarding IICA's Petition

FDA requests that interested persons submit data and information concerning the need for, and the appropriateness of, revoking the standards for goat's milk ice cream and mellorine and amending the standards for ice cream and frozen custard, sherbet, and water ices as proposed by IICA. FDA specifically requests comment and supporting data, as appropriate, on the following provisions set forth in the petition:

1. The use of filtered milk in the making of frozen desserts;
2. The use of any safe and suitable milk-derived ingredients in the manufacture of frozen desserts;
3. The use of milk from source animals other than cows in the making of ice cream and frozen custard and sherbet;
4. The use of ''alternate make'' procedures in the manufacture of ice cream and frozen custard and sherbet;
5. A minimum weight requirement of 4 pounds per gallon for reduced fat ice cream;
6. A minimum milk-derived protein requirement based on the amount of fat;
7. The removal of the requirement of the maximum 25-percent restriction on whey solids in ice cream and frozen custard;
8. The removal of the requirements for the amounts of fruits, fruit juices, and nut meats needed to determine if an artificial flavor simulating a characterizing flavor is the predominant flavor when naming an ice cream or frozen dessert product, and providing that the manufacturer may determine whether the natural or artificial flavor ingredients provide the characterizing flavor of the product for purposes of labeling;
9. The establishment of categories of ingredients to be declared on labels under common names for ice cream and frozen custard;
10. The removal of the restrictions on ingredients in goat's milk ice cream;
11. The use of a 2-percent minimum level of fruit content in sherbet.

After reviewing the comments received, FDA will further evaluate the need for, and appropriateness of, each of the amendments requested by IICA and will decide what further actions are appropriate. To facilitate comment, in the following paragraphs FDA discusses some of the amendments requested by IICA.

IICA proposes amending the current standards of identity for frozen desserts (part 135) to provide for a definition of ''milk'' that includes ''filtered milk'' for use in the manufacture of frozen desserts. IICA also proposes allowing categories of ingredients to be declared on labels under a common name. For example, IICA proposes allowing filtered milk in dried and liquid form to be labeled as ''milk.'' Currently, filtered milk is not allowed in the manufacture of frozen desserts. FDA solicits comment on the need to amend the standard to provide for the use of filtered milk in the making of frozen desserts, and whether all forms or only specific forms of filtered milk should be permitted. FDA also solicits comments on the importance of filtered milk for the basic nature and essential characteristics of ice cream. The basic nature of the food is directly related to consumer expectations and beliefs about the food. The essential characteristics of a food are those that define or distinguish a food or describe the distinctive properties of a food. Although the essential characteristics of a food may contribute to achieving the basic nature of that food or may be relevant to meeting certain consumer expectations about the food, they differ from the basic nature of the food in that consumers may not be aware of the essential characteristics that make the food what it is.

The standards for ice cream and frozen custard, sherbet, and water ices proposed by IICA permit the use of any safe and suitable ingredient added to accomplish a specific function. FDA recognizes the need for food standards to permit flexibility in food technology, as long as that technology does not alter the basic nature or essential characteristics of the food. The existing regulatory framework governing standardized foods already provides for the addition of substances for a nutritional purpose. Under the provisions of (part 130) 21 CFR 130.10, standardized foods may be modified to contain nutrients not specifically permitted by the relevant standard of identity and to make an expressed nutrient content claim defined by FDA regulation. FDA also notes that flexibility in the use of ingredients for a functional purpose may be achieved by specifying the ingredients by functional use category, e.g., ''emulsifiers'' or ''preservatives,'' rather than by listing the specific ingredients. FDA seeks comment on the proposed amendment permitting the use of any safe and suitable ingredient to accomplish a specific function in the manufacture of frozen desserts.

IICA proposes replacing the minimum nonfat milk solids requirement contained in the current ice cream and frozen custard and sherbet standards with a minimum milk-derived protein requirement based on the amount of fat because the nonfat milk solids cannot be differentiated from other solids in the foods. FDA seeks comments on the following: (1) The necessity and appropriateness of this proposed amendment; (2) whether this amendment would be consistent with the basic nature and essential characteristics of ice cream and frozen custard and sherbet; (3) whether the proposed minimum milk-derived protein content requirement should replace the current minimum nonfat milk solids requirement or be implemented in addition to the current requirement for a minimum nonfat milk solids; and (4) how replacing a minimum nonfat milk solid requirement with a minimum milk-derived protein requirement would affect the compositional and nutritional profile of the product.

In its petition, IICA proposes to provide for the use of any safe and suitable milk-derived ingredient, such as components or fractions of milk including, milkfat, milk protein, milk sugars and minerals in the manufacture of frozen desserts. IICA asserts this would allow for the use of newly developed ingredients without having to amend the standard. FDA solicits comment on the appropriateness of this proposed amendment, and on whether it would be consistent with the basic nature and essential characteristics of frozen desserts.

IICA proposes creating categories of ingredients to be declared on labels under a common name to allow manufacturers to adjust their formulas based on ingredient availability without the need to print new labels. In addition, IICA asserts that the milk-derived ingredients in the proposed categories are nutritionally and functionally equivalent when used in frozen desserts, and therefore, consumers would not be deceived by the proposed categories because the final product would be nutritionally equivalent regardless of the individual ingredient within the class that is used. We seek comment on the appropriateness of this amendment requested by IICA. Specifically, FDA seeks comment on whether consumers would be confused by category names on frozen desserts when compared to other dairy products or non-dairy products and whether category names as described in the petition would inform consumers about the specific ingredients that are used to make the food. In addition, if considered appropriate, should collective names be permitted for all the categories in the petition? Why or why not? Would consumers be confused, misled or deprived of material information?

IICA also proposes including a new provision for ''alternate make'' procedures in the manufacture of frozen desserts. IICA states that this provision is necessary to provide flexibility to permit the use of improvements in food technology without having to amend the standards. However, IICA did not submit information about any current ''alternate make'' procedures. We request information describing ''alternate make'' procedures in the making of ice cream currently available and on the consistency of those procedures with the basic nature and essential characteristics of ice cream. In addition, if ''alternate make'' procedures are allowed, is the framework currently used for cheese standards appropriate for ice cream?

The current standard for ice cream and frozen custard has a maximum 25 percent restriction on whey solids. The IICA proposed standard removes the maximum 25-percent restriction on whey solids in ice cream and frozen custard to allow for any combination of safe and suitable dairy-derived ingredients, provided the proposed minimum milk-derived protein content is satisfied. FDA requests comment on the following: (1) The appropriateness of removing the maximum 25-percent restriction on whey solids to allow for any combination of safe and suitable dairy-derived ingredients, provided the minimum milk-derived protein content is satisfied; (2) any concerns with using whey protein as a main ingredient in the manufacture of ice cream and frozen custard; (3) any information that supports the contention in the petition that whey protein currently used in the market is of higher nutritional value, higher quality and protein digestibility than protein currently used in ice cream and custard; and (4) whether the use of more than 25-percent whey ingredients is consistent with the basic nature and essential characteristics of ice cream and frozen custard.

IICA proposes removing the amounts of fruits, fruit juices, and nut meats in the ice cream and frozen custard standard used to determine whether an artificial flavor simulating a characterizing flavor is the predominant flavor when naming the product. IICA states that under its proposed amendments, the manufacturer would

determine whether the natural or artificial flavor ingredients provides the characterizing flavor of the product and would label the product accordingly. In its petition, IICA also proposes changing the requirements in sherbet for the amounts of fruit or fruit juice from a minimum of 6-percent for berry sherbets and a minimum of 10-percent for sherbets from other fruits to a minimum of 2-percent. FDA implemented the current requirement for determining whether the fruit ingredient or artificial flavor is the characterizing flavor of the food in 1964 when a final rule on frozen desserts was published. We recognize that there have been advancements in food technology, and we question whether this requirement is still necessary. Specifically, FDA seeks comment on the following: (1) Whether standard amounts of fruits, fruit juices, and nut meats are needed to determine if an artificial flavor simulates a characterizing flavor when naming the product; (2) other alternatives to the current requirements in the standard and to the petitioner's proposed amendment that would ensure products are labeled in a way that would not be misleading to consumers; and (3) whether it is appropriate to allow manufacturers to determine whether the fruit ingredient or artificial flavor predominates in characterizing the flavor of the product and label the product accordingly.

IICA proposes amending the current standard of identity for sherbet to provide for a 2-percent minimum fruit content. Under the current sherbet standard, the minimum amount of fruit content is not less than 2-percent for citrus sherbets, 6-percent for berry sherbets, and 10-percent for sherbets prepared with other fruits. FDA solicits comment on changing the varying minimum levels of fruit content in sherbet to a 2-percent minimum content for all types of fruit and on what technical impact such an amendment would have on the finished product. FDA also solicits comments on the consistency of the existing and proposed minimum fruit content levels with the basic nature and essential characteristics of citrus sherbet, berry sherbets, and other relevant sherbets.

FDA further solicits comments on whether any other requirements that are currently in the standards for frozen deserts including ice cream, frozen custard, water ice, and sherbet are not needed to ensure that products bearing these terms on their labels conform to the basic nature and essential characteristics of these products. FDA also requests information on the costs associated with any unnecessary elements or on the cost savings associated with eliminating them.

FDA solicits comments on the impact of the recommended changes in food standards on manufacturers of frozen deserts and, in particular, on small manufacturers. The relevant impacts include both direct effects, such as labeling costs and changes in production costs, as well as indirect effects, such as any impact on the sales of products affected by these changes.

FDA solicits comments on any paperwork burden from generating the recommended changes in food standards.

In addition, while we ask for comment on specific petition provisions, we would accept comment on other aspects of the frozen desserts standards. Please submit copies of supportive data along with your comments.

On May 20, 2005, FDA published a proposed rule entitled ''Food Standards; General Principles and Food Standards Modernization'' (hereinafter referred to as the ''food standards proposal'') (70 FR 29214) that proposes to establish a set of general principles to modernize food standards. While we recognize that we are proposing this advance notice of proposed rulemaking (ANPRM) before the food standards proposal is finalized, we encourage the public to consider the proposed general principles in the food standards proposal when commenting on this ANPRM.

C. International Ice Cream Association Requested Amendments

The requested amendments of the ice cream and frozen custard standard, the sherbet standard, and the water ices standard submitted by IICA are set forth in the following paragraphs. The following language is as suggested by IICA; FDA has made only minor nonsubstantitve changes. FDA will further evaluate the need and appropriateness of these regulations proposed by IICA following the receipt of public comments.

IICA's suggested standard of identity for ice cream and frozen custard is as follows:

Subpart A—General Provisions

§ 135.3 *Definitions*.

For the purposes of this part:

(a) A pasteurized mix is one in which every particle of the mix has been heated in properly operated equipment to one of the temperatures specified in the table in this section and held continuously at or above that temperature for the specified time (or other time/temperature relationship which has been demonstrated to be equivalent thereto in microbial destruction):

Temperature	Time
155 °F	30 min.
175 °F	25 sec.
180 °F	15 sec.
191 °F	1 sec.
204 °F	0.05 sec.
212 °F	0.01 sec.

(b) Ultra-pasteurized when used to describe a dairy product means that such product shall have been thermally processed at or above 280 °F for at least 2 seconds, either before or after packaging, so as to produce a product which has an extended shelf life under refrigerated conditions.

(c) *Milk* means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, which may be clarified and may be adjusted by separating part of the fat therefrom; concentrated milk, filtered milk, reconstituted milk, and dry whole milk. Water in sufficient quantity to reconstitute concentrated and dry forms may be added.

(d) *Nonfat milk* means skim milk, concentrated skim milk, filtered skim milk, reconstituted skim milk and nonfat dry milk. Water in a sufficient quantity to reconstitute concentrated forms may be added.

(e) *Milk-derived protein* means casein and/or whey protein(s) and its constituents, fractions, hydrolysates or polymers derived from milk.

(f) Milk-derived ingredients means any ingredient derived from milk or any component or fraction of milk such as milkfat, milk proteins defined in 135.3(e), milk sugars and minerals.

[42 FR 19127 at 19132, April 12, 1977]

Subpart B—Requirements for Specific Standardized Frozen Desserts

§ 135.110 *Ice Cream and frozen custard*.

(a) *Description*. (1) Ice cream is produced by freezing, while stirring, a pasteurized aerated mix consisting of safe and suitable milk-derived ingredients alone or in combination; and excluding other food fats, except such as are natural components of flavoring ingredients used or are added in incidental amounts to accomplish specific functions. The use of milk and milk products from cows as well as other milk source animals (e.g., goat, sheep) is permitted. Water may be added, or water may be removed from the mix. Safe and suitable non-dairy

derived ingredients that serve a useful function may be added. Ice cream is sweetened with safe and suitable sweeteners and may be characterized by the addition of flavoring ingredients.

(2) Ice cream is a food prepared by the procedures set forth in paragraph (a) of this section, or by any other procedure which produces a finished product which has essentially the same physical, chemical and organoleptic characteristics.

(3) Ice cream contains not less than 1.6 pounds of total solids to the gallon, and weighs not less than 4.5 pounds to the gallon, except where the ice cream is a fat reduced ice cream as defined by applicable sections of § 130.10, reduced fat ice cream shall weigh not less than 4.0 pounds per gallon. Ice cream contains not less than 10-percent milkfat, nor less than 2.95 percent milk-derived protein, except that when it contains milkfat above 10-percent minimum, it may contain the following milkfat, milk-derived protein levels specified in the table in this section. The protein to meet the minimum milk-derived protein requirement shall be provided by milk-derived ingredients, and shall have a protein efficiency ratio (PER) not less than that of whole milk protein (108 percent of casein) as determined by the method prescribed in the most recent edition of AOAC Approved Methods for the following protein levels.

Percent Milkfat	Minimum Percent Milk-Derived Protein
10	2.95
11	2.66
12	2.36
13	2.07
14	1.77

Except that when one or more bulky flavors are used, the weight of milkfat is not less than 10-percent of the remainder obtained by subtracting the weight of the bulky flavors from the weight of the finished food; but in no case is the weight of milkfat less than 7.5 percent of the weight of the finished food, nor is the milk-derived protein content less than 1.8 percent of the weight of the finished food. Except in the case of frozen custard, ice cream contains less than 1.4 percent egg yolk solids by weight of the food, exclusive of the weight of any bulky flavoring ingredients used. Frozen custard, french ice cream or french custard ice cream shall contain at a minimum 1.4 percent egg yolk solids by weight of the finished food: Provided, however, that when bulky flavors are added the egg yolk solids content of frozen custard, french ice cream or french custard ice cream may be reduced in proportion to the amount by weight of the bulky flavors added, but in no case is the content of egg yolk solids in the finished food less than 1.12-percent. A product containing egg yolk solids of at least 1.4 percent, the maximum set forth in this paragraph for ice cream, may be marketed if labeled as specified by paragraph (c) of this section.

(4) When calculating the minimum amount of milkfat and milk-derived protein required in the finished food, the solids of chocolate or cocoa used shall be considered a bulky flavoring ingredient. In order to make allowance for additional sweetening ingredients needed when certain bulky ingredients are used, the weight of chocolate or cocoa solids used may be multiplied by 2.5; the weight of fruit or nuts used may be multiplied by 1.4; and the weight of partially or wholly dried fruits or fruit juices may be multiplied by appropriate factors to obtain the original weights before drying and this weight may be multiplied by 1.4.

(b) *Methods of analysis*. (1) The fat content shall be determined by using the Mojonnier method prescribed in the most current edition of the ''Official Methods of Analysis of AOAC INTERNATIONAL'' as the reference method. Copies may be obtained from AOAC INTERNATIONAL, First Union National Bank Lockbox, PO Box 75198, Baltimore, MD 21275–5198, or may be examined at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/code_of_federal_regulation/ibr_locations.html*.

(2) The protein content shall be determined by one of the following methods: ''Nitrogen Official Final Action,'' Kjeldahl Method, Section 16.285, or Dye Binding Method, Section 16.286 found in the most current edition of the ''Official Methods of Analysis of AOAC INTERNATIONAL'' as the reference method.

(3) PER shall be determined by the method: ''Biological Evaluation of Protein Quality—Official Final Action, sections 43.212–43.216'' found in the most current edition of the ''Official Methods of Analysis of AOAC INTERNATIONAL'' as the reference method.

(c) *Nomenclature*. (1) When the food is made exclusively from cows milk, the name of the food is ''ice cream;'' except that when the egg yolk solids content of the food is in excess of that specified for ice cream by paragraph (a) of this section, the name of the food is ''frozen custard'' or ''french ice cream'' or ''French custard ice cream.'' When the food is made exclusively from the milk of a single milk source animal other than cows (e.g., goats), the name of the food is ''__milk ice cream,'' or as appropriate, ''frozen__milk custard,'' ''french__milk ice cream,'' ''french custard__milk ice cream'' (the blank being filled in with the name of the milk source animal, e.g., ''goat's milk ice cream''). When the food is partially made with milk or milk products from milk source animals other than cows, the name of the food is accompanied by the phrase ''made with__milk'' (the blank being filled in with name(s) of all milk source animals).

(2)(i) If the food contains no artificial flavor, the name on the principal display panel or panels of the label shall be accompanied by the common or usual name of the characterizing flavor, e.g., ''vanilla,'' in letters not less than one-half the height of the letters used in the words ''ice cream.''

(ii) If the food contains both a natural characterizing flavor and an artificial flavor simulating it, and if the natural flavor predominates, the name on the principal display panel or panels of the label shall be accompanied by the common name of the characterizing flavor, in letters not less than one-half the height of the letters used in the

words ''ice cream,'' followed by the word ''flavored,'' in letters not less than one-half the height of the letters in the name of the characterizing flavor, e.g., ''Vanilla flavored,'' or ''Peach flavored,'' or ''Vanilla flavored and Strawberry flavored.''

(iii) If the food contains both a natural characterizing flavor and an artificial flavor simulating it, and if the artificial flavor predominates, or if artificial flavor is used alone the name on the principal display panel or panels of the label shall be accompanied by the common name of the characterizing flavor in letters not less than one-half the height of the letters used in the words ''ice cream,'' preceded by ''artificial'' or ''artificially flavored,'' in letters not less than one-half the height of the letters in the name of the charactering flavor, e.g., ''artificial Vanilla,'' or ''artificially flavored Strawberry'' or ''artificially flavored Vanilla and artificially flavored Strawberry.''

(3)(i) If the food is subject to the requirements of paragraph (c)(2)(ii) of this section or if it contains any artificial flavor not simulating the characterizing flavor, the label shall also bear the words ''artificial flavor added'' or ''artificial__flavor added,'' the blank being filled with the common name of the flavor simulated by the artificial flavor in letters of the same size and prominence as the words that precede and follow it.

(ii) Wherever the name of the characterizing flavor appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words prescribed by this paragraph shall immediately and conspicuously precede or follow such name, in a size reasonably related to the prominence of the name of the charactering flavor and in any event the size of the type is not less than 6-point on packages containing less than 1 pint, not less than 8-point on packages containing at least 1 pint by less than one-half gallon, not less than 10-point on packages containing at least one-half gallon by less than 1 gallon, and not less than 12-point on packages containing 1 gallon or over: Provided, however, that where the characterizing flavor and a trademark or brand are presented together, other written, printed, or graphic matter that is a part of or is associated with the trademark or brand, may intervene if the required words are in such relationship with the trademark or brand as to be clearly related to the characterizing flavor: And provided further, that if the finished product contains more than one flavor of ice cream subject to the requirements of this paragraph, the statements required by this paragraph need appear only once in each statement of characterizing flavors present in such ice cream, e.g., ''Vanilla flavored, Chocolate, and Strawberry flavored, artificial flavors added.''

(4) If the food contains both a natural characterizing flavor and an artificial flavor simulating the characterizing flavor, any reference to the natural characterizing flavor shall, except as otherwise authorized by this paragraph, be accompanied by a reference to the artificial flavor, displayed with substantially equal prominence, e.g., ''strawberry and artificial strawberry flavor.''

(5) An artificial flavor simulating the characterizing flavor shall be deemed to predominate:

(i) In the case of vanilla beans or vanilla extract used in combination with vanillin if the amount of vanillin used is greater than 1 ounce per unit of vanilla constituent, as that term is defined in § 169.3(c) of this chapter.

(ii) In determining the characterizing flavor of products other than those in paragraph 5(i) of this section, it shall be incumbent on the manufacturer to conclude whether the natural or artificial flavor intensity predominates. The manufacturer shall determine which flavor is present in the greatest intensity and label the product accordingly. For example, strawberry ice cream consists of a combination of natural strawberries and artificial strawberry flavor. If the natural strawberry component was stronger in flavor intensity it would be deemed to predominate, and the ice cream would be labeled ''strawberry flavored.'' If, on the other hand, the artificial strawberry flavor component was stronger in flavor intensity, the artificial flavor component would be deemed to predominate, and the ice cream would be labeled ''artificially flavored strawberry'' or ''artificial strawberry.''

(iii) In the case of two or more fruits or fruit juices, or nut meats or both, used in combination with artificial flavors simulating the natural flavors and dispersed throughout the food, if the quantity of any fruit or fruit juice or nut meat is not sufficient to characterize the flavor, the products would be labeled as ''a blend of artificial and natural fruit and/or nut flavoring.''

(6) If two or more flavors of ice cream are distinctively combined in one package, e.g., ''Neapolitan'' ice cream, the applicable provisions of this standard shall govern each flavor of ice cream comprising the combination.

(7) If the food purports to be or is represented for special dietary use, it shall bear labeling in accordance with the requirements of part 105 of this chapter.

(d) *Label declaration*. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

(1) Milk, concentrated milk, evaporated milk, dried milk, filtered milk in liquid and dried form, may be declared as ''milk.''

(2) Nonfat milk, skim milk, condensed skim milk, evaporated skim milk, nonfat dried milk, filtered nonfat milk in liquid and dried form may be declared as ''nonfat milk.''

(3) Buttermilk, sweet cream buttermilk, condensed sweet cream buttermilk and dried sweet cream buttermilk may be declared as ''buttermilk.''

(4) Cream, whey cream, dried cream, plastic cream (sometimes known as concentrated milkfat) may be declared as ''cream.''

(5) Butter, butter oil, and anhydrous milk fat may be declared as ''butter fat.''

(6) Milk-derived protein such as casein, whey protein and its constituents, fractions, hydrolysates or polymers derived from milk, except filtered milk, may be declared as ''milk proteins.''

(7) Whey, concentrated whey, reconstituted whey and dried whey may be declared as ''whey.''

(e) Under section 403(k) of the Federal Food, Drug, and Cosmetic Act, artificial color need not be declared in ice cream, except as required by § 101.22(c) or (k) of this chapter. Voluntary declaration of all colors used in ice cream and frozen custard is recommended.

§ 135.140 *Sherbet*.

(a) *Description*. (1) Sherbet is produced by freezing, while stirring, an aerated pasteurized mix consisting of safe and suitable milk-derived ingredients alone or in combination; and excluding other food fats, except such as are added in small amounts to accomplish specific functions or are natural components of flavoring ingredient used. The use of milk and milk products from cows as well as other milk source animals (e.g., goat, sheep) is permitted. Water may be added, or water may be removed from the mix. Safe and suitable non-dairy derived ingredients may be added that serve a useful function. Sherbet is sweetened with safe and suitable sweeteners and is characterized by the addition of one or more of the optional fruit-characterizing ingredients specified in paragraph (b) of this section or one or more of the optional nonfruit-characterizing ingredients specified in paragraph (c) of this section.

(2) Sherbet is a food prepared by the procedure set forth in paragraph (a)(3) of this section, or by any other procedure, which produces a finished product, which has essentially the same physical, chemical and organoleptic characteristics.

(3) Sherbet weighs not less than 6 pounds to the gallon. The milkfat content is not less than 1 percent nor more than 2-percent. The milk-derived protein content is not less than 0.295 percent and not greater than 1.18 percent in the case of 1 percent milkfat or not greater than 0.89 percent in the case of 2-percent milkfat.

(b) *Optional fruit-characterizing ingredients*. The optional fruit-characterizing ingredients referred to in paragraph (a) of this section are any mature fruit or the juice of any mature fruit. The fruit or fruit juice used may be fresh, frozen, canned, concentrated, or partially or wholly dried. The quantity of fruit ingredients used is such that, in relation to the weight of the finished sherbet, the weight of fruit or fruit juice, as the case may be (including water necessary to reconstitute partially or wholly dried fruits or fruit juices to their original moisture content), is not less than 2-percent. For the purpose of this section, tomatoes and rhubarb are considered as kinds of fruit.

(c) *Optional nonfruit characterizing ingredients*. Optional nonfruit characterizing ingredients may be used.

(d) *Nomenclature*. (1) The name of each sherbet is as follows:

(i) When the food is made exclusively from cows milk, the name of each fruit sherbet is ''__sherbet,'' the blank being filled in with the common name of the fruit or fruits from which the fruit ingredients used are obtained. When the names of two or more fruits are included, such names shall be arranged in order of predominance, if any, by weight of the respective fruit ingredients used.

(ii) When the food is made exclusively from cows milk, the name of each nonfruit sherbet is ''__sherbet,'' the blank being filled in with the common or usual name or names of the characterizing flavor or flavors; for example, ''peppermint,'' except that if the characterizing flavor used is vanilla, the name of the food is ''__sherbet,'' the blank being filled in as specified by § 135.110(e)(2) and (5)(i).

(iii) When the food is made exclusively from the milk of a single milk source animal other than cows (e.g., goats), the name of the food is specified as in paragraphs (d)(1)(i) and (ii) of this section, except that the phrase ''__milk'' shall immediately precede the word ''sherbet'' (the blank being filled in with the name of the milk source animal, e.g., ''goat's milk ice cream''). When the food is partially made with milk or milk products from milk source animals other than cows, the name of the food is accompanied by the phrase ''made with __milk'' (the blank being filled in with the name(s) of all milk source animals).

(2) When the optional ingredients, artificial flavoring, or artificial coloring are used in sherbet, they shall be named on the label as follows:

(i) If the flavoring ingredient or ingredients consists exclusively of artificial flavoring, the label designation shall be ''artificially flavored.''

(ii) If the flavoring ingredients are a combination of natural and artificial flavors, the label designation shall be ''artificial and natural flavoring added.''

(iii) The label shall designate artificial coloring by the statement ''artificially colored,'' ''artificial coloring added,'' ''with added artificial coloring,'' or ''__, an artificial color added,'' the blank being filled in with the name of the artificial coloring used.

(e) *Characterizing flavor(s)*. Wherever there appears on the label any representation as to the charactering flavor or flavors of the food and such flavor or flavors consist in whole or in part of artificial flavoring, the statement required by paragraphs (d)(2)(i) and (d)(2)(ii) of this section, as appropriate, shall immediately and conspicuously precede or follow such representation, without intervening written, printed, or graphic matter (except that the word ''sherbet'' may intervene) in a size reasonably related to the prominence of the name of the characterizing flavor and in any event the size of the type is not less than 6-point on packages containing less than 1 pint, not less than 8-point on packages containing at least 1 pint but less than one-half gallon, not less than 10-point on packages containing at least one-half gallon but less than 1 gallon, and not less than 12-point on packages containing 1 gallon or over.

(f) *Display of statements required by paragraph (d)(2)*. Except as specified in paragraph (e) of this section, the statements required by paragraph (d)(2) of this section shall be set forth on the principal display panel or panels of the label with such prominence and conspicuousness as to render them likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(g) *Label declaration*. Each of the ingredients used shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

§ 135.160 *Water Ices*.

(a) *Description*. Water ices are the foods each of which is prepared from safe and suitable ingredients and complies with all the provisions of § 135.140(a)(1) and (a)(2), except that stirring while freezing or aerating is not required, and the mix need not be pasteurized, and no milk or milk-derived ingredient and no egg ingredient, other than egg white, is used.

(b) *Optional fruit-characterizing ingredients*. The optional fruit-characterizing ingredients referred to in paragraph (a) of this section are any mature fruit or the juice of any mature fruit. The fruit or fruit juice used may be fresh, frozen, canned, concentrated, or partially or wholly dried. For the purpose of this section, tomatoes and rhubarb are considered as kinds of fruit.

(c) *Optional nonfruit characterizing ingredients*. Optional nonfruit characterizing ingredients may be used.

(d) *Nomenclature*. The name of the food is ''__ice,'' the blank being filled in, the same manner as specified in §§ 135.140(d)(2)(i) and (ii) and (iii)(e), (f), and (g), as appropriate.

II. Kraft Foods, Inc. (Kraft Foods) Petition

Kraft Foods submitted a citizen petition dated August 28, 2000, requesting that FDA amend the current standard of identity in part 133 (21 CFR part 133) for parmesan and reggiano cheese (hereinafter parmesan cheese) (§ 133.165). In its petition, Kraft Foods proposed that the minimum curing time for parmesan cheese be reduced from 10 months to 6 months, by changing the last sentence of § 133.165(a) from ''[i]t is cured for not less than 10 months'' to ''[i]t is cured for not less than 6 months.''

FDA is publishing this document in accordance with section 701(e)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C 371(e)(1)), which directs the Secretary of Health and Human Services to publish proposals made by petition to amend or repeal a dairy food standard, so long as the petition includes reasonable grounds for the action requested, and to provide interested persons with an opportunity to present their views. FDA tentatively finds that Kraft Foods' petition presents reasonable grounds. Therefore, FDA requests comment on whether the actions proposed in the petition would promote honesty and fair dealing in the interest of consumers.

A. Grounds for the Suggested Change to the Parmesan Cheese Standard

In the **Federal Register** of February 21, 1973 (34 FR 4710), FDA found that reducing the minimum curing time of parmesan cheese from 14 months to 10 months increased productivity, improved product consistency, and reduced production costs with no material disadvantage to consumers. Based on these findings, the standard of identity for parmesan cheese was amended to reduce the required curing time from a minimum of 14 months to a period of not less than 10 months. According to Kraft Foods, technology has continued to improve and parmesan cheese is now able to be produced within a curing period of 6 months. Kraft Foods submits that consistent with the 1973 findings, FDA should, for essentially the same reasons, amend the parmesan cheese standard to reduce its required curing period to not less than 6 months.

In April of 1999, Kraft Foods was issued a temporary marketing permit (TMP) for market testing its ''100% Grated Parmesan Cheese'' cured for 6 months (64 FR 16743, April 6, 1999). In November of 1999, FDA issued Sartori Foods Corp. a TMP to market test its 6-month cured ''Grated Parmesan Cheese'' (64 FR 60820, November 8, 1999). On August 28, 2000, Kraft Foods submitted to FDA an application for extension of its TMP accompanied by a petition to amend the parmesan cheese standard. As stated in the **Federal Register** (65 FR 83040, December 29, 2000), an extension was granted to allow for continuous data collection on consumer acceptance of the products while the agency took action on the petition to amend the standard.

In its petition, Kraft Foods states that its make procedure involves the use of an improved enzyme technology but is otherwise consistent with the make procedure and curing techniques Kraft Foods has followed for many years. Using commercially-available safe and suitable enzymes (21 CFR 133.165(b)) and the current make procedure, Kraft Foods states that it is possible to produce fully-cured parmesan cheese suitable for grating in 6 months, rather than the 10-month minimum curing time currently required by the standard of identity. Kraft Foods states that the modern manufacturing procedures, commercially-available enzymes, and modern equipment that it uses are generally available to enable any knowledgeable processor through the utilization of adequate scientific research and experimentation to produce parmesan cheese conforming with the standard of identity in the shorter 6-month curing time.

According to its petition, through periodic evaluation of product, Kraft Foods determined that parmesan cheese cured for 6 months is physically and organoleptically equivalent to current parmesan cheese cured for 10 months. In addition, Kraft Foods conducted organoleptic evaluations through consumer taste panels that confirmed that the grated 6-month cured product is considered by consumers to be equivalent (i.e., in taste, texture and cooking properties) to grated parmesan cheese currently available to consumers. Kraft Foods also states that the shortened curing time has no effect on the nutrition profile of the product.

Although not specifically addressed in its petition, Kraft Foods briefly addressed the issue of safety in its TMP application. In its TMP application, Kraft Foods stated that its 6-month cured parmesan cheese product is ''just as wholesome and nondeleterious as other such cheeses available to consumers.'' FDA relied on the representations made in the petitioner's application in approving the TMP, and we tentatively concluded, at that time, that the shortened time period would not affect the safety of the product, i.e., there is not a safety concern.

Kraft Foods states that there is a substantial economic benefit from reducing the curing time from 10 months to 6 months. Kraft Foods states that the proposed amendment would reduce the cost of inventory and reduce losses from damage during the additional 4-month holding period; therefore, the shorter curing time may also make it possible for manufacturers to devote some of their production resources to the manufacture of other cheese products, thereby maximizing the use of plant resources and increasing production efficiencies. Kraft Foods also maintains that the substantial curing/holding times required to produce parmesan cheese effectively mean that the cost of entry into the parmesan cheese production business is quite high. Kraft Foods notes that in the long run, reducing the curing time for this product will significantly reduce the costs of entry into the business, in turn, creating the opportunity for greater competition, which benefits consumers, who are best served by a marketplace in which there is more, rather than less, competition.

B. Matters of Particular Interest to FDA Regarding Kraft Foods' Petition

FDA requests that interested persons submit data and information concerning the need for, and the appropriateness of, amending the standard for parmesan cheese. FDA specifically requests comment on whether the proposed amendment will affect the basic nature, organoleptical, safety or physical properties of parmesan cheese. FDA requests comments, especially from small business, on Kraft Food's statement that this change will reduce cost barriers to entry into the marketplace.

C. Kraft Foods Requested Amendment

The requested amendment of the parmesan cheese standard submitted by Kraft Foods is set forth in the following paragraph:

§ 133.165 *Parmesan and reggiano cheese.*

(a) * * * It is cured for not less than 6 months.

* * * * *

FDA will evaluate the need and appropriateness of the proposed regulation following the receipt of public comments.

III. Comments

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

IV. Authority

This advance notice of proposed rulemaking is issued under sections 201, 401, 403, 409, 701, and 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, and 379e), and under the authority of the Commissioner of Food and Drugs, as redelegated to the Director, Center for Food Safety and Applied Nutrition.

Dated: September 16, 2005.

Leslye M. Fraser,

Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 05–19194 Filed 9–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–156518–04]

RIN 1545–BE10

Section 411(d)(6) Protected Benefits; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document corrects a notice of proposed rulemaking and notice of public hearing (REG–156518–04) that was published in the **Federal Register** on Friday, August 12, 2005 (70 FR 47155). The document contains regulations relating to the anti-cutback rules of section 411(d)(6) of the Internal Revenue Code, which generally protect accrued benefits, early retirement benefits, retirement-type subsidies, and optional forms of benefit under qualified retirement plans.

FOR FURTHER INFORMATION CONTACT: Pamela R. Kinard, (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing (REG–156518–04) that is the subject of this correction is under section 411(d)(6) of the Internal Revenue Code.

Need for Correction

As published, REG–156518–04 contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking and notice of public hearing (REG–156518–04), that was the subject of FR Doc. 05–15960, is corrected as follows:

1. On page 47155, column 2, in the preamble under the caption **ADDRESSES:**, fourth line from the bottom of the paragraph, the language 156581–04). The public hearing will be'' is corrected to read ''156518–04). The public hearing will be''.

§ 1.411(d)–3 [Corrected]

2. On page 47159, column 1, § 1.411(d)–3, (a)(4) paragraph (ii) *Example 4*, the last line of the paragraph, the language ''greater of the 2.'' is corrected to read, ''greater of the 2 vesting schedules (*e.g.*, for G and each other participant in Plan E to be fully vested if the participant completes 5 years of service) for those account balances and earnings.''.

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 05–19222 Filed 9–26–05; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 197

[FRL–7975–6]

RIN 2060–AN15

Notice of Extension of the Public Comment Period, Public Health and Environmental Radiation Protection Standards for Yucca Mountain, NV; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period and announcement of additional public hearing in Las Vegas on October 6, 2005.

SUMMARY: The Environmental Protection Agency is extending the comment period for the Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada; Proposed Rule which appeared in the **Federal Register** on August 22, 2003 (68 FR 65120). The public comment period for this proposed rule was to end on October 21, 2005. The purpose of this notice is to extend the comment period to November 21, 2005, and to announce an additional public hearing in Las Vegas on October 6, 2005.

DATES: EPA will accept public comments on this proposed rule until November 21, 2005. Comments received after that date will be marked ''late'' and accepted at our discretion. The public hearing will be on October 6, 2005 from 11 a.m. to 12. a.m. This hearing will be preceded by an information session from 10 a.m. to 11 a.m.

ADDRESSES: Procedures for preregistering for and testifying at the public hearing are detailed in the ''Hearings Procedures'' subsection of the **SUPPLEMENTARY INFORMATION** section. Comments may be submitted by mail to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2005–0083. Comments may also be submitted electronically or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ray Clark, Office of Radiation and Indoor Air, Radiation Protection Division (6608J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001; telephone (202) 343–9601; fax number: 202–343–2305; e-mail address: *clark.ray@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Extension of the Public Comment Period

The proposed rule which is the subject of this notice was published in the **Federal Register** on August 22, 2005 (70 FR 49014). That notice requested public comment on the proposed amendments to the public health and environmental radiation protection standards for Yucca Mountain, Nevada (40 CFR part 197).

At that time, EPA announced a 60-day public comment period ending on October 21, 2005. However, the Agency has received formal requests from several stakeholders to extend the comment period to 180 days. EPA recognizes the high level of interest in the issue of Yucca Mountain and that the proposed rule addresses safety over unprecedented time frames. Furthermore, the Agency agrees that it is important to allow adequate time for public information to readily reach more rural areas, particularly in Nevada, which may be affected by decisions related to Yucca Mountain. In view of these factors, and in consideration of requests from the stakeholders, EPA is extending the comment period an additional 30 days to end on November 21, 2005. This will provide a full three months for the public to submit comments, as much time as EPA provided for the full Yucca Mountain standards issued in 2001, which covered a significantly wider array of issues.

II. Additional Public Hearing in Las Vegas, Nevada

EPA is also adding an additional day, October 6, 2006, for a public hearing in Las Vegas, to respond to concerns about schedule conflicts with religious holidays. Hearings for two days (October 4 and October 5) in Las Vegas were announced in a previous **Federal Register** notice published on September 14, 2005 (70 FR 54325–54327). That notice also announced hearings in

Amargosa Valley, Nevada and in Washington, DC. The hearings previously announced in the **Federal Register** will be held as described in the earlier notice; EPA is simply providing an additional hearing in Las Vegas.

The additional hearing will be held October 6, 2005, at the Cashman Center, 850 North Las Vegas Blvd, Las Vegas, Nevada, from 10 a.m. until 12 p.m. An information session will be held from 10 a.m.–11 a.m. and a public hearing from 11 a.m.–12 p.m.

Meeting Purpose and Format

The meetings will provide opportunities for both informal exchanges of information and formal comments. Meeting formats are as follows:

- *Information Sessions:* an informal opportunity to learn about the standards, meet EPA staff, and ask questions. Comments on the record can also be provided in writing or on tape.
- *Public Hearings:* a formal opportunity to make verbal statements that will be recorded for the public record. For the convenience of the public, individuals and organizations should schedule a specific time to make their comments (see Hearings Procedures below).

Hearing Procedures

Persons wishing to testify at any of the public hearings are requested to pre-register by calling EPA's toll-free Yucca Mountain Information Line at 1–800–331–9477 at any time. You will be asked to leave a message with the following information:

- Name/Organizational Affiliation (if any).
- Hearing time(s) available to testify.
- Daytime telephone number.

Your call will be returned within one business day to confirm a scheduled time for testimony. In order to obtain a scheduled speaking time, EPA must receive requests no later than September 30, 2005, for the hearings in Las Vegas, Nevada. Speakers not registered in advance may register at the door but are not guaranteed the opportunity to testify, depending on time constraints (all individuals will also be able to comment in writing or on tape). Individuals testifying on their own behalf will be allowed 5 minutes. Groups or organizations must designate one individual to testify as the official representative, and each group will be allocated ten minutes for an oral presentation. Individuals and organizations may submit written comments in addition to oral testimony. Time allowed is exclusive of any time consumed by questions from the government panel and answers to these questions. Testimony from individuals and representatives of organizations is limited to one hearing location. In order to ensure that all individuals and groups are given an opportunity to testify, substitutions will not be permitted for any pre-registered person. Registrants will not be permitted to yield their time to other individuals or groups, nor will hearing time be used to ''read into the record'' testimony from individuals not present at the hearings. In the event any person wishes to enter comments for the record, but either cannot or does not appear personally at the hearings, EPA will accept written comments during the hearings and other meetings. These written comments will be considered to the same extent as oral testimony and will be included as part of the official hearings transcripts. The hearing transcript will constitute the official record of the hearings. Written comments submitted outside of the public hearings must be received by EPA Docket OAR–2005–0083 in Washington, DC, by November 21, 2005. All comments received by EPA, whether written or oral, will be given equal consideration in development of the final rule.

III. How and to Whom Do I Submit Comments?

EPA is providing numerous ways for the public to provide comments for us to consider in developing our final rule. First, the Agency has scheduled two public hearings in Nevada and one in Washington, DC. A **Federal Register** notice has been published with times, locations, and format of the meetings. In addition, you may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted by November 21, 2005. Comments received after that date will be marked ''late.'' EPA is not required to consider these late comments, but will do so at its discretion.

To submit comments electronically:

- Follow the instructions at the Federal e-Rulemaking Web site: *http://www.regulations.gov*, OR
- Go to EPA's *E-Docket for item OAR–2005–0083*, click on submit comment, OR,
- E-mail comments to: *a-and-r-docket@epa.gov* and specify ''to the attention of Docket ID No. OAR–2005–0083.''

Do not use e-mail or the E-Docket to submit confidential business information or other legally protected information.

Send comments by surface mail to:

EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2005–0083.

Send comments by fax to: 202–566–1741, Attention: Docket ID. No. OAR–2005–0083.

Deliver comments by courier or in-person to:

Air and Radiation Docket, EPA Docket Center, (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

Dated: September 20, 2005.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 05–19256 Filed 9–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[FRL–7974–9]

South Dakota: Final Authorization of State Hazardous Waste Management Program Revision and Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: South Dakota has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization and is proposing to authorize the State's changes through this proposed final action. Title 40 of the Code of Federal Regulations (CFR) Part 272 is used by EPA to codify its decision to authorize individual State programs and incorporates by reference those provisions of the State statutes and regulations that are subject to EPA's inspection and enforcement authorities as authorized provisions of the State's program. This action also proposes to codify the authorized provisions of the South Dakota regulations. Finally, today's document corrects errors made in the State authorization citations published in the August 10, 1999 and November 3, 2003 **Federal Register**

authorization documents for South Dakota.

DATES: Written comments must be received by October 27, 2005.

ADDRESSES: Submit your comments by one of the following methods: 1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments. 2. E-mail: *shurr.kris@epa.gov.* 3. Mail: Kris Shurr, 8P–HW, U.S. EPA, Region 8, 999 18th St., Ste 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139. 4. Hand Delivery or Courier: Deliver your comments to Kris Shurr, 8P–HW, U.S. EPA, Region 8, 999 18th St., Ste 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system 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 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. Copies of the South Dakota program revision applications and the materials which EPA used in evaluating the revisions are available for inspection and copying at the following locations: EPA Region 8, from 7 a.m. to 4 p.m., 999 18th Street, Suite 300, Denver, Colorado 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139, or SDDENR, from 9 a.m. to 5 p.m., Joe Foss Building, 523 E. Capitol, Pierre, South Dakota 57501–3181, contact: Carrie Jacobson, phone number (605) 773–3153.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, 8P–HW, U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466, phone number: (303) 312–6139 or email: *shurr.kris@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Authorization of Revisions to South Dakota's Hazardous Waste Program

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Action?

We conclude that South Dakota's applications to revise its authorized program meet all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant South Dakota final authorization to operate its hazardous waste program with the changes described in the authorization applications. South Dakota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian country, and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in South Dakota, including issuing permits, until South Dakota is authorized to do so.

C. What Is the Effect of Today's Authorization Decision?

This decision means that facilities in South Dakota subject to RCRA will have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. South Dakota has enforcement responsibility under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to conduct inspections and require monitoring, tests, analyses, or reports; and enforce RCRA requirements; suspend or revoke permits.

This action does not impose additional requirements on the regulated community because the regulations for which South Dakota is being authorized by today's action are already effective and are not changed by today's action.

D. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will address all public comments in a later **Federal Register**. You will not have another opportunity to comment, therefore, if you want to comment on this action, you must do so at this time.

E. What Has South Dakota Previously Been Authorized For?

South Dakota initially received Final authorization on October 19, 1984, effective November 2, 1984 (49 FR 41038) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on April 17, 1991, effective June 17, 1991 (56 FR 15503); September 8, 1993, effective November 8, 1993 (FR 47216); January 10, 1994, effective March 11, 1994 (59 FR 01275); July 24, 1996, effective September 23, 1996 (61 FR 38392); May 9, 2000, effective June 8, 2000 (65 FR 26755) and April 23, 2004, effective May 24, 2004 (69 FR 21962).

F. What Changes Are We Proposing To Authorize With Today's Action?

South Dakota submitted a final complete program revision application on October 25, 2004, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, subject to receipt of written comments that oppose this action, that South Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant South Dakota final authorization for the following program changes:

1. Program Revision Changes for Federal Rules

South Dakota seeks authority to administer the Federal requirements that are listed below (the Federal Citation is followed by the analog from the Administrative Rules of South Dakota (ARSD 74:28), revised August 29, 2004): Reissuance of the ''Mixture'' and ''Derived-From'' Rules (57 FR

07628, 03/03/92; 57 FR 23062, 06/01/92; 57 FR 49278, 10/30/92) (Checklists 117A through 117A.2)/74:28:22:01; Universal Waste Rule—Specific Provisions for Pesticides (60 FR 25492, 05/11/95) (Checklist 142C)/74:28:21:02, 74:28:22:01, 74:28:25:01, 74:28:26:01, 74:28:28:01, 74:28:30:01, and 74:28:33:01; RCRA Expanded Public Participation (60 FR 63417, 12/11/95) (Checklist 148)/74:28:26:01; Organic Air Emission Standards for Tanks, Surface Impoundments, & Containers (59 FR 62896, 12/06/94; 60 FR 26828, 05/19/95; 60 FR 50426, 09/29/95; 60 FR 56952, 11/13/95; 61 FR 04903, 02/09/96; 61 FR 28508, 06/05/96; and 61 FR 59932, 11/25/96) (Checklists 154 through 154.6)/74:36:11:01, 74:28:21:02, 74:28:22:01, 74:28:23:01, 74:28:25:01, 74:28:26:01, and 74:28:28:01; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment (62 FR 64636, 12/08/97) (Checklist 163)/74:28:25:01, 74:28:26:01, and 74:28:28:01; Mineral Processing Secondary Materials Exclusion (63 FR 28556, 05/26/98)(Checklist 167D—revised)/ 74:28:22:01; HWIR-Media (63 FR 65874; 11/30/98) (Checklist 175)/74:28:21:01(17), 74:28:21:02, 74:28:22:01, 74:28:25:01, 74:28:26:01, 74:28:28:01, and 74:28:30:01; Test Procedures for the Analysis of Oil and Grease and Non-Polar Material (64 FR 26315, 05/14/99) (Checklist 180)/74:28:21:02; Petroleum Refining Process Wastes—Clarification (64 FR 36365, 06/08/00) (Checklist 187)/74:28:22:01 and 74:28:30:01; Hazardous Air Pollutant Standards; Technical Corrections (65 FR 42292, 07/10/00; 66 FR 24270, 05/14/01; 66 FR 35087, 07/03/01) (Checklists 188 through 188.2)/74:28:22:01, 74:28:25:01, and 74:28:26:01; Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes (65 FR 67068, 11/8/00) (Checklist 189)/74:28:22:01 and 74:28:30:01; Land Disposal Restrictions Phase IV Deferral for PCBs in Soil (65 FR 81373, 12/26/00) (Checklist 190)/74:28:30:01; Storage, Treatment, Transportation, and Disposal of Mixed Waste (66 FR 27218, 05/16/01) (Checklist 191)/74:28:27:01; Mixture and Derived-From Rules Revisions (66 FR 27266, 05/16/01) (Checklist 192A)/74:28:22:01; Land Disposal Restrictions Correction (66 FR 27266, 05/16/01) (Checklist 192B)/74:28:30:01; Change of Official EPA Mailing Address (66 FR 34374, 06/28/01) (Checklist 193)/74:28:21:02; Mixture and Derived-From Rules Revision II (66 FR 50332, 10/03/01) (Checklist 194)/74:28:22:01; Inorganic Chemical Manufacturing Wastes Identification and Listing (66 FR 58258, 11/20/01; 67 FR 17119, 04/09/02) (Checklists 195 & 195.1)/74:28:22:01 and 74:28:30:01; CAMU Amendments (67 FR 2962, 01/22/02) (Checklist 196)/74:28:21:02 and 74:28:25:01; Hazardous Air Pollutant Standards for Combustors: Interim Standards (67 FR 6792, 02/13/02) (Checklist 197)/74:28:25:01, 74:28:26:01, 74:28:27:01, and 74:28:28:01; Hazardous Air Pollutant Standards for Combustors: Corrections (67 FR 6968, 02/14/02) (Checklist 198)/74:28:26:01 and 74:28:27:01; Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes (67 FR 11251, 03/13/02) (Checklist 199)/74:28:22:01; Zinc Fertilizer Rule (67 FR 48393, 07/24/02) (Checklist 200)/74:28:22:01, 74:28:27:01, and 74:28:30:01; Treatment Variance for Radioactively Contaminated Batteries (67 FR 62618, 10/07/02) (Checklist 201)/74:28:30:01; Hazardous Air Pollutants for Combustors-Corrections 2 (67 FR 77687, 12/19/02) (Checklist 202)/74:28:26:01.

2. State-Initiated Changes

South Dakota has made amendments to its regulations that are not directly related to any of the Federal rules addressed in Item F.1 above. These State-initiated changes are either conforming changes made to existing authorized provisions, or the adoption of provisions that clarify and make the State's regulations internally consistent. The State's regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the Federal laws and regulations. These State initiated changes are submitted under the requirements of 40 CFR 271.21(a) and include the following provisions from the Administrative Rules of South Dakota (ARSD 74:28), revised August 29, 2004: 74:28:21:01 introductory paragraph, 74:28:21:01(2)–(16), 74:28:21:03, 74:28:24:01, 74:28:25:02 through 74:28:25:05, 74:28:28:02 through 74:28:28:05 and 74:28:33:01.

G. Where Are the Revised State Rules Different From the Federal Rules?

South Dakota did not make any changes that are more stringent or broader-in-scope than the Federal rules in this rulemaking. South Dakota did not change any previously more stringent or broader-in-scope provisions to be equivalent to the Federal rules.

H. Who Handles Permits After the Authorization Takes Effect?

South Dakota will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which were issued prior to the effective date of this authorization until South Dakota has equivalent instruments in place. We will not issue any new permits or new portions of permits for the provisions listed in Item G after the effective date of this authorization. EPA previously suspended issuance of permits for other provisions on the effective date of South Dakota's Final Authorization for the RCRA base program and each of the revisions listed in Item F. EPA will continue to implement and issue permits for HSWA requirements for which South Dakota is not yet authorized.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in South Dakota?

This program revision does not extend to ''Indian country'' as defined in 18 U.S.C. 1151. Indian country includes:

1. Lands within the exterior boundaries of the following Indian reservations located within the State of South Dakota:

a. Cheyenne River Indian Reservation;

b. Crow Creek Indian Reservation;

c. Flandreau Indian Reservation;

d. Lower Brule Indian Reservation;

e. Pine Ridge Indian Reservation;

f. Rosebud Indian Reservation;

g. Standing Rock Indian Reservation;

h. Yankton Indian Reservation;

2. Any land held in trust by the United States for an Indian tribe; and,

3. Any other areas which are ''Indian country'' within the meaning of 18 U.S.C. 1151.

II. Corrections

A. Corrections to August 10, 1999 (64 FR 43331) Proposed Authorization Document

There were typographical errors and omissions in the table published as part of the August 10, 1999 (64 FR 43331) authorization notice for South Dakota. The corrections for the affected entries are as follows (the corrections have been italicized):

1. In the entry for Checklist 82, insert ''*74:28:25:05*'' after ''74:28:23:01'' and insert ''*74:28:28:05*'' after ''74:28:26:01'';

2. In the entry for Checklist 92, insert ''*74:28:25:05*'' after ''74:28:23:01'' and insert ''*74:28:28:05*'' after ''74:28:26:01'';

3. In the entry for Checklist 120, insert ''*74:28:25:05*; *74:28:28:05*'' after ''74:28:22:01''; and

4. In the entry for Checklist 142A, insert ''*74:28:23:01*'' after ''74:28:22:01''.

B. Corrections to November 3, 2003 (68 FR 62264) Proposed Authorization Document

There were typographical errors and omissions in the State citations published as part of the November 3, 2003 (68 FR 62264) authorization notice for South Dakota. The affected entries in Section F, ''What Changes Are We Proposing To Authorize With Today's Action?'' are shown below. The corrections have been italicized.

1. All references to ''78:28'' are corrected to read ''*74*:28''

2. The State citation ''74:28:21:01'' is removed from the entry for Hazardous Air Pollutant Standards for Combustors (Checklist 182).

3. The entry for ''Toxicity Characteristics Revision as of June 30, 2000'' is revised to read as follows: *Toxicity Characteristics Revision as of June 30, 2000* (Consolidated Checklist includes 55 FR 11798, 3/29/90 and 55 FR 26986, 6/29/90 (Checklist 74)/*74:28:22:01, 74:28:25:01, 74:28:28:01 and 74:28:30:01*; 55 FR 40834, 10/5/90, 56 FR 03978, 2/1/91, and 56 FR 13406, 4/2/91 (Checklist 80)/*74:28:22:01*; 56 FR 05910, 2/13/91 (Checklist 84)/*74:28:22:01*; 57 FR 30657, 7/10/92 (Checklist 108)/*74:28:22:01 and* 74:28:28:01; 57 FR 23062, 6/1/92 (Checklist 117B)/*74:28:22:01*; 57 FR 55114, 11/24/92 (Checklist 119)/*74:28:22:01*, as well as 58 FR 46040, 8/31/93 (Checklist 126 update)/*74:28:30:01* and 62 FR 25998, 5/12/97 (Checklist 157 update)/*74:28:22:01 and 74:28:30:01*.

4. One entry was inadvertently omitted from the list of State provisions being authorized by EPA. The entry should be added to the end of the list as follows:

Exceptions to Blending and Burning of Hazardous Waste (RCRA Section 3004(q)(2)(A), (r)(2) and (r)(3), as codified in 40 CFR 261.4(a)(12)(i)&(ii)) (Non-Checklist Item BB)/74:28:22:01.

III. Incorporation By Reference

A. What Is Codification?

Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program into the CFR. Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs. The State regulations authorized by EPA supplant the federal regulations concerning the same matter with the result that after authorization EPA enforces the authorized regulations. Infrequently, State statutory language which acts to regulate a matter is also authorized by EPA with the consequence that EPA enforces the authorized statutory provision. EPA does not authorize State enforcement authorities and does not authorize State procedural requirements. EPA codifies the authorized State program in 40 CFR part 272 and incorporates by reference State statutes and regulations that make up the approved program which is Federally enforceable in accordance with Sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions.

B. What Decisions Have We Proposed in This Action?

Today's action proposes to codify EPA's authorization of South Dakota's base hazardous waste management program and its revisions to that program. The proposed codification reflects the State program that would be in effect at the time EPA's authorized revisions to the South Dakota hazardous waste management program addressed in this proposed rule become final. This proposed action does not reopen any decision EPA previously made concerning the authorization of the State's hazardous waste management program. EPA is not requesting comments on its decisions published in the **Federal Register** notices referenced in section I.E of this document concerning revisions to the authorized program in South Dakota.

EPA is proposing to incorporate by reference EPA's approval of South Dakota's hazardous waste management program by amending Subpart QQ to 40 CFR part 272. The proposed action amends § 272.2101 and incorporates by reference South Dakota's authorized hazardous waste regulations, as amended through August 29, 2004. Section 272.2101 also references the demonstration of adequate enforcement authority, including procedural and enforcement provisions, which provide the legal basis for the State's implementation of the hazardous waste management program. In addition, § 272.2101 references the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are evaluated as part of the approval process of the hazardous waste management program in accordance with Subtitle C of RCRA.

C. What Is the Effect of South Dakota's Codification on Enforcement?

EPA retains the authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in all authorized States. With respect to enforcement actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State analogs to these provisions. Therefore, the EPA is not proposing to incorporate by reference South Dakota's inspection and enforcement authorities nor are those authorities part of South Dakota's approved State program which operates in lieu of the Federal program. 40 CFR 272.2101(c)(2) lists these authorities for informational purposes, and also because EPA considered them in determining the adequacy of South Dakota's procedural and enforcement authorities. South Dakota's authority to inspect and enforce the State's hazardous waste management program requirements continues to operate independently under State law.

D. What State Provisions Are Not Proposed as Part of the Codification?

The public is reminded that some provisions of South Dakota's hazardous waste management program are not part of the federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are ''broader in scope'' than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Federal rules for which South Dakota is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference.

(3) State procedural and enforcement authorities which are necessary to establish the ability of the State's program to enforce compliance but which do not supplant the Federal statutory enforcement and procedural authorities.

State provisions that are ''broader in scope'' than the Federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, EPA proposes to list in 40 CFR 272.2101(c)(3) the South Dakota statutory provisions which are ''broader in scope'' than the Federal program and which are not part of the authorized program being incorporated by reference. While ''broader in scope'' provisions are not part of the authorized program and cannot be enforced by EPA; the State may enforce such provisions under State law.

South Dakota has adopted but is not authorized for certain Federal final rules published between May 11, 1995 and March 17, 2000. Therefore, the Federal

amendments to 40 CFR parts 261, 262, 263, 264, 265, 266, 268, 270 and 273 addressed by these Federal rules and included in South Dakota's adoption by reference at ARSD, section 74:28:22:01, 74:28:23:01, 74:28:24:01, 74:28:25:01, 74:28:28:01, 74:28:27:01, 74:28:30:01, 74:28:26:01 and 74:28:33:01, respectively, are not part of the State's authorized program included in this proposed codification. EPA is proposing to identify in 40 CFR 272.2101(c)(4) those Federal regulations which, while adopted by South Dakota, are not authorized by EPA.

E. What Will Be the Effect of the Proposed Codification on Federal HSWA Requirements?

With respect to any requirement(s) pursuant to HSWA for which the State has not yet been authorized, and which EPA has identified as taking effect immediately in States with authorized hazardous waste management programs, EPA will enforce those Federal HSWA standards until the State is authorized for those provisions.

The proposed codification does not affect Federal HSWA requirements for which the State is not authorized. EPA has authority to implement HSWA requirements in all States, including States with authorized hazardous waste management programs, until the States become authorized for such requirements or prohibitions, unless EPA has identified the HSWA requirement(s) as an optional or as a less stringent requirement of the Federal program. A HSWA requirement or prohibition, unless identified by EPA as optional or as less stringent, supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Some existing State requirements may be similar to the HSWA requirements implemented by EPA. However, until EPA authorizes those State requirements, EPA enforces the HSWA requirements and not the State analogs.

IV. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action proposes to authorize and codify State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to authorize and codify pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this proposed action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize and codify State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This proposed action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This proposed 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.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed action, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the proposed action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Parts 271 and 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Dated: September 20, 2005.

Robert E. Roberts,

Regional Administrator, Region VIII.

For the reasons set forth in the preamble, 40 CFR parts 271 and 272 are proposed to be amended as follows:

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

EPA is proposing to grant final authorization under part 271 to the State of South Dakota for revisions to its hazardous waste program under the Resource Conservation and Recovery Act.

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Subpart QQ—[Amended]

2. Subpart QQ is amended by adding § 272.2101 to read as follows:

§ 272.2101 South Dakota State-administered program: final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), South Dakota has final authorization for the following elements as submitted to EPA in South Dakota's base program application for final authorization which was approved by EPA effective on November 2, 1984. Subsequent program revision applications were approved effective on June 17, 1991, November 8, 1993, March 11, 1994, September 23, 1996, June 8,

2000, May 24, 2004 and [effective date of final rule].

(b) The State of South Dakota has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.* (1) The South Dakota regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the South Dakota regulations that are incorporated by reference in this paragraph are available from South Dakota Legislative Research Council, 3rd Floor, State Capitol, 500 East Capitol Avenue, Pierre, SD 57501 (Phone: 605–773–3251).

(i) The Binder entitled ''EPA Approved South Dakota Regulatory Requirements Applicable to the Hazardous Waste Management Program'', dated [Month and Year of effective date of final rule].

(ii) [Reserved]

(2) EPA considered the following statutes and regulations in evaluating the State program, but they are not incorporated by reference for enforcement purposes:

(i) South Dakota Codified Laws (SDCL), as amended, effective July 1, 2004, Title 1, State Affairs and Government: Chapter 1–26, Administrative Procedures and Rules, sections 1–26–1(1), 1–26–1(4), 1–26–1(8) introductory paragraph, 1–26–1(8)(a), 1–26–2, 1–26–6.6, 1–26–16 through 1–26–19, 1–26–19.1, 1–26–19.2, 1–26–27, 1–26–29, 1–26–30, 1–26–30.1, 1–26–30.2, 1–26–30.4, 1–26–31, 1–26–31.1, 1–26–31.2, 1–26–31.4, 1–26–35 and 1–26–36; Chapter 1–27, Public Records and Files, sections 1–27–1, first sentence, 1–27–3, 1–27–9(2) and 1–27–28(2); Chapter 1–32, Executive Reorganization, section 1–32–1(1); Chapter 1–40, Department of Natural Resources, sections 1–40–4.1, 1–40–24, 1–40–31 and 1–40–34.

(ii) SDCL, as amended, effective July 1, 2004, Title 15, Civil Procedure: Chapter 15–6, Rules of Procedure in Circuit Courts, section 15–6–24(a)–(c).

(iii) SDCL, as amended, effective July 1, 2004, Title 19, Evidence: Chapter 19–13, Privileges, sections 19–13–2(1), 19–13–2(5), 19–13–3, 19–13–20 and 19–13–22.

(iv) SDCL, as amended, effective July 1, 2004, Title 21, Judicial Remedies: Chapter 21–8, Injunction, section 21–8–1.

(v) SDCL, as amended, effective July 1, 2004, Title 22, Crimes: Chapter 22–6, Authorized Punishments, sections 22–6–1 introductory paragraph and 22–6–1(6).

(vi) SDCL, as amended, effective July 1, 2004, Title 23, Law Enforcement: Chapter 23–5, Criminal Identification, sections 23–5–1, 23–5–10(1), 23–5–10(3), 23–5–10(4) and 23–5–11 first sentence; Chapter 23–6, Criminal Statistics, section 23–6–4.

(vii) SDCL, as amended, effective July 1, 2004, Title 34, Public Health and Safety: Chapter 34–21, Radiation and Uranium Resources Exposure Control, section 34–21–2(7).

(viii) SDCL, as amended, effective July 1, 2004, Title 34A, Environmental Protection: Chapter 34A–6, Solid Waste Disposal, section 34A–6–1.3(17); Chapter 34A–10, Remedies for Protection of Environment, sections 34A–10–1, 34A–10–2, 34A–10–5, 34A–10–11, 34A–10–14 and 34A–10–16, Chapter 34A–11, Hazardous Waste Management, sections 34A–11–1 through 34A–11–4, 34A–11–5, 34A–11–8 through 34A–11–12, 34A–11–13 through 34A–11–16, 34A–11–17 through 34A–11–19, 34A–11–21 and 34A–11–22.

(ix) SDCL, as amended, effective July 1, 2004, Title 37, Trade Regulation, Chapter 37–29, Uniform Trade Secrets Act, section 37–29–1(4).

(x) Administrative Rules of South Dakota (ARSD), Article 74:08, Administrative Fees, effective August 29, 2004: Chapter 74:08:01, Fees for Records Reproduction, sections 74:08:01:01 through 74:08:01:07.

(3) The following statutory provisions are broader in scope than the Federal program, are not part of the authorized program, are not incorporated by reference and are not federally enforceable:

(i) SDCL, as amended, effective July 1, 2004, Title 34A, Environmental Protection, Chapter 34A–11, Hazardous Waste Management, sections 34A–11–12.1, 34A–11–16.1, 34A–11–25 and 34A–11–26.

(ii) [Reserved]

(4) *Unauthorized State Amendments.* (i) South Dakota has adopted but is not authorized for the following Federal final rules:

(A) Removal of Legally Obsolete Rules (HSWA/non-HSWA) (60 FR 33912, 06/29/95);

(B) Imports and Exports of Hazardous Waste: Implementation of OECD Council Division (HSWA—Not delegable to States) (61 FR 16290, 04/12/96);

(C) Clarification of Standards for Hazard Waste Land Disposal Restriction Treatment Variances (HSWA)(62 FR 64504, 12/05/97); and

(D) Vacatur of Organobromide Production Waste Listings (HSWA)(65 FR 14472, 03/17/00).

(ii) Those Federal rules written under RCRA provisions that predate HSWA (non-HSWA) which the State has adopted, but for which it is not authorized, are not Federally enforceable. In contrast, EPA will continue to enforce the Federal HSWA standards for which South Dakota is not authorized until the State receives specific authorization from EPA.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 8 and the State of South Dakota, signed by the State of South Dakota Department of Natural Resources on June 6, 1996, and by the EPA Regional Administrator on June 25, 1996, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* ''Attorney General's Statement for Final Authorization'', signed by the Attorney General of South Dakota on May 24, 1984, and revisions, supplements and addenda to that Statement dated January 14, 1991, September 11, 1992, September 25, 1992, April 1, 1993, September 24, 1993, August 23, 1994, December 29, 1994, September 5, 1995, October 23, 1997, October 27, 1997, October 28, 1997, November 5, 1999, June 26, 2000, June 18, 2002 and October 19, 2004, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272 , State Requirements, is amended by adding in alphabetical order, ''South Dakota'' and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

South Dakota

The regulatory provisions include:

Administrative Rules of South Dakota, Article 74:28, Hazardous Waste, effective August 29, 2004, sections 74:28:21:01, 74:28:21:02, 74:28:21:03, 74:28:22:01, 74:28:23:01, 74:28:24:01, 74:28:25:01 through 74:28:25:05, 74:28:26:01, 74:28:27:01, 74:28:28:01 through 74:28:28:05, 74:28:29:01, 74:28:30:01 and 74:28:33:01; Article 74:36, Air Pollution Control Program, as of August 29, 2004, section 74:36:11:01.

Copies of the South Dakota regulations that are incorporated by reference are available from South Dakota Legislative Research Council, 3rd Floor, State Capitol, 500 East Capitol Avenue, Pierre, SD 57501 (Phone: 605–773–3251).

* * * * *

[FR Doc. 05–19255 Filed 9–26–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by Mr. Albert Donnay requesting NHTSA to require manufacturers to offer carbon monoxide detectors in all new gasoline powered vehicles and to make available retrofit devices for older vehicles. These detectors would automatically shut off the engine when carbon monoxide levels inside the vehicle exceed a concentration of 200 parts per million, when the vehicle is stationary. The data show that a mandate for in-vehicle carbon monoxide detectors would fail to address more than 70% of vehicle-related carbon monoxide deaths, because the victims are outside the vehicle. NHTSA will use its resources to consider safety areas where more effective solutions are available.

FOR FURTHER INFORMATION CONTACT: Mr. John Lee, Office of Crash Avoidance Standards, NVS–123, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–2720. Fax: (202) 366–7002.

For legal issues: Mr. George Feygin, Office of Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: On January 12, 2001, Mr. Albert Donnay submitted a petition for rulemaking requesting that NHTSA: (1) Issue annual press releases on the dangers of vehicle carbon monoxide [1] (CO) poisoning and recommend the use of CO detectors, (2) report CO vehicle-related fatalities (suicide, unintentional, in moving and stationary vehicles), (3) fund research on CO poisoning in vehicles, (4) require information on the dangers of carbon monoxide poisoning be included in owners' manuals and (5) require manufacturers to install CO detectors in all new gasoline powered vehicles and offer equivalent devices for older vehicles. These detectors would have the capability to cut-off the engine when carbon monoxide levels inside the vehicle exceed a concentration of 200 parts per million (ppm) for a stationary vehicle. In moving vehicles the occupants would be directed to open a window immediately when an audio and visual warning is given off by the detector when CO level reached 10 ppm. In support of his petition, Mr. Donnay cited two NHTSA Research Notes, ''Fatalities Associated With Carbon Monoxide Poisoning From Motor Vehicles in 1993'' December 1996,[2] and ''Fatalities Associated With Carbon Monoxide Poisoning From Motor Vehicles, 1995–1997'' April 2000.[3]

The agency is denying the petition for the reasons explained below. We began our consideration of the petition by reviewing the data. In May 2004, the agency published a more comprehensive study of injuries and fatalities resulting from, among other things, CO poisoning.[4] This study was based on a review of 1998 death certificates from 35 states. The results of the study found that CO deaths most often do not involve moving vehicles, but rather vehicles left running in enclosed spaces. There were 140 deaths associated with vehicle generated carbon monoxide poisoning found in the death certificates reviewed. Of the 140 deaths, 41 deaths (29%) occurred while the individual was sitting in the vehicle. The other 71% of deaths involved people outside the vehicle. One hundred twenty-nine of the fatalities (92%) occurred in a garage, home, or residence. Most of the scenarios involved someone working on a vehicle with the vehicle running in a closed garage, or a death in a residence when someone left a vehicle running in a garage attached to the home. A review of scientific literature cited in the report found, ''Unintentional poisonings from vehicle-generated carbon monoxide diminished toward the close of the 20th century, with a particular decline in these types of incidents noted in the years following 1975 when catalytic converters were introduced into automobiles. The steady decline from 4.0 to 0.9 deaths per 1 million person-years since 1975 represents a 76.3 percent decrease. The total number of 1998 unintentional motor vehicle related deaths from carbon monoxide has been reported at 238.'' Thus, there is a decline in vehicle-related CO deaths absent any regulation. In addition, the data about vehicle-related CO deaths indicate a home CO detector would be substantially more effective than a vehicle CO detector at preventing these deaths because 92% of the fatalities occurred at the home.

Further, we note that NHTSA has previously denied a petition for rulemaking that is substantially similar to Mr. Donnay's petition,[5] because the costs far exceeded the expected benefits. Specifically, the agency denied a petition for rulemaking submitted by Mr. Herb Denenberg, which requested that: (1) The agency require carbon monoxide detectors in all new motor vehicles; (2) the agency require manufacturers to offer optional carbon monoxide detectors in all new motor vehicles, (3) the agency require that the owners' manuals indicate the

[1] Carbon monoxide is a colorless, odorless gas that is contained in the exhaust of gasoline powered motor vehicles. When inhaled in sufficient quantities, carbon monoxide can cause illness or death.

[2] The December 1996 Research Note reported data collected by the National Center for Health Statistics (NCHS) on the estimated number of people killed as a result of CO poisoning by exhaust gases from motor vehicles in 1993. The study examined factors such as stationary and moving vehicles, unintentional and suicidal CO deaths, season of the year, and vehicle location. NCHS reported that in 1993, 1,978 deaths occurred while the vehicle was in the stationary position. Eighty-four percent of the deaths were the result of suicide, 12 percent were accidental and 3 percent were of unknown intent. The annual average of accidental fatalities in stationary vehicles for 1993 was 245.

[3] The April 2000 Research Note reported an annual average of 222 accidental fatalities associated with CO poisoning for stationary vehicles for a period between 1995 and 1997. The data from the April 2000 Research Note indicated a decline in accidental fatalities in stationary vehicles from 234 CO fatalities in 1995 to 208 CO fatalities in 1997.

[4] ''Non-Traffic Death and Injury Data Collection Study,'' see *http://www.nhtsa.dot.gov/cars/problems/studies/NonTraffic-NonCrash/Images/noncrash.pdf.*

[5] See 62 FR 49190, September 19, 1997.

availability and value of installing a carbon monoxide detector; and (4) the agency issue press releases and consumer advisories with information regarding the availability and value of CO detectors. The petitioner cited the results of the 1996 Research Note and stated, ''many if not most of these deaths could be prevented by carbon monoxide detectors,'' but did not offer any data to support this assertion. NHTSA denied the Denenberg petition because the costs would have been unjustifiable [6] in relation to the benefits. The effectiveness of CO detectors lessens substantially over time and most vehicle-related CO deaths involve older vehicles.

The agency is denying this petitioner's request for the same reasons. In addition to our previously stated reasons for denying the petition, the agency is also concerned that the automatic engine shut-off device proposed by the petitioner could prove to be a hazard. For example, in a tunnel with congested traffic, the concentration of CO may cause the device to shut off the engine, resulting in further traffic congestion or even possible crashes.

In accordance with 49 CFR part 552, this completes the agency's technical review of the petition for rulemaking from Mr. Albert Donnay. Based on this review, the agency has concluded its resources would be more productively directed to other areas. Therefore, Mr. Donnay's petition is denied.

Issued on: September 20, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–19214 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–59–P

[6] We estimated that the total cost of the requirement would exceed $240 million. This estimate does not include the cost of installation and maintenance.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Gentry Indigo Bush as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Gentry indigo bush (*Dalea tentaculoides*) as endangered under the Endangered Species Act of 1973, as amended. After reviewing the best available scientific and commercial information, we find that listing the species is not warranted at this time. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the species. This information will help us monitor the status of the species.

DATES: The finding announced in this document was made on September 14, 2005. Although no further listing action will result from this finding, we request that you submit new information concerning the status of, or threats to, this species whenever it becomes available.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours at the Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951. Please submit any new information, materials, comments, or questions concerning this species or this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Mima Falk, Plant Ecologist, Arizona Ecological Services Tucson Sub-Office, 201 North Bonita Ave., Suite 141, Tucson, AZ, 85745; 520–670–6150, ext. 225.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but that the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Endangered and Threatened Species. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded be treated as though resubmitted on the date of such finding, *i.e.*, requiring a subsequent finding to be made within 12 months. Such 12-month findings must be published in the **Federal Register**.

On January 7, 2002, we received a petition dated January 2, 2002, requesting that we list the Gentry indigo bush (*Dalea tentaculoides*) as an endangered species, and that critical habitat be designated concurrently with the listing. In a Stipulated Settlement Agreement, signed June 14, 2004 [*Center for Biological Diversity* v. *Norton,* CV 03–473–TUC–FRZ (D. Az)], we agreed to submit a 90-day finding to the **Federal Register** by January 31, 2005. On January 25, 2005, we made our 90-day petition finding that the petition provided substantial information indicating that listing may be warranted. The finding and our initiation of a status review was published in the **Federal Register** on February 2, 2005 (70 FR 5401). We are required, pursuant to the court approved Stipulated Settlement Agreement, to make our 12-month finding pursuant to the Act [16 U.S.C. 1533(b)(3)(B)] by September 15, 2005.

Biology and Distribution

Gentry indigo bush is an erect perennial shrub that grows from a woody root crown and can be up to 1 meter (m) (3.2 feet (ft)) tall. It is a member of the Fabaceae (Pea) Family. The leaves are compound, 3–6 centimeters (cm) (1.2–2.4 inches (in)) long with 9–17 pairs of leaflets. The leaflets are hairless, notched at the tip, and dotted with punctuate glands (translucent pitted glands or colored dots) on the lower surface. The flowers are sessile (lacking a stalk), 6 millimeters (mm) (0.24 in) in length, and are presented in oblong clusters. The flower petals are rose-purple. Plants flower in the spring, from late March to mid-May. They may produce a second set of flowers in late summer and fall in response to monsoon precipitation.

Howard S. Gentry originally described the species in 1950. It is a distinctive member of the genus *Dalea* with no closely related species (Gentry 1950; Barneby 1977). The main distinguishing character that separates this species from other sympatric species is the presence of elongate, brown, tentacle-like glands on the calyx (the outer whorl of flowering parts), lobes, floral bracts (the reduced or modified leaf subtending a flower), and branches.

Gentry indigo bush is known historically in the United States from only three areas in southern Arizona: The western and northern slopes of the Baboquivari Mountains (Tohono O'odham Nation), the Coyote Mountains (Mendoza Canyon), and Sycamore Canyon (Coronado National Forest) in

the Atascosa Mountains. Today, plants are only known to occur in Sycamore Canyon and on lands within the Tohono O'odham Nation (Schmalzel 2005).

The plant has also been found at three locations in Mexico. The first location was found in 1995, northeast of Huásabas in the State of Sonora. In 2004, the species was documented to occur in Sierra El Humo, south-southwest of Sasabe, Arizona, in northwestern Sonora, Mexico (L. Hahn, pers. comm., 2004). Surveys in 2005 documented the persistence of those two populations and discovered a third in the Sierra de La Madera (Van Devender 2005).

Surveys in Sycamore Canyon, AZ

Gentry indigo bush grows in scattered patches at elevations of 1,097 to 1,219 m (3,600 to 4,000 ft) in Sycamore Canyon and several side channels. Plants are usually found on floodplain terraces in sandy or gravel soils, or, less commonly, on talus slopes (a slope formed by an accumulation of rock debris) close to the floodplain. The usual tree canopy for Gentry indigo bush consists of Arizona sycamore (*Platanus wrightii*), Arizona ash (*Fraxinus velutina*), Arizona walnut (*Juglans major*), and several oak species. Plants can be found growing under these trees or out in the open. Where Gentry indigo bush grows in the semi-active floodplain, plants are exposed to periodic flooding and scouring events. Observations made by Gori *et al.* (1992) and Falk (1993) support the idea that plants are adapted to periodic, low-intensity floods. Plants that had been covered with sediment were found to be growing up through the deposited material. The plants can reproduce vegetatively (asexually), and roots have been found to connect young plants to nearby larger clumps. The ability to reproduce asexually presents a problem in estimating population numbers in that it is impossible to determine if plants are connected, except by uprooting them. As a result, the number of stems counted may not equal the number of individuals. Thus, the data from field surveys described below should be considered only rough estimates of population numbers.

There have been limited observations of sexual reproduction in the field. Gori *et al.* (1992) documented some reproduction on the monitoring plot, although they had difficulty determining if the new recruits were ramets (vegetative offshoots) or seedlings. Small plants located in May 2005 were pulled up and were identified as seedlings, not vegetative offshoots (Baker 2005). It is not known if the seeds had lain dormant in the seed bank or were from a recent reproductive event. None of the adult plants had seed pods, and no seed pods were found on the ground (Falk, pers. obs. 2005). In fact, plants rarely have been observed to produce seed (Falk 1993; Gori *et al.* 1992). This may be the result of timing, as plants may not have been producing fruit at the time surveys were conducted. Schmalzel (2005) found seeds within dried inflorescences (*i.e.*, flowers) during his survey work in July. Staff from the Desert Botanical Garden collected approximately 15 seeds from plants they assumed to be Gentry indigo bush in 1998 and 1999, but the quantities are too small to conduct germination tests (K. Rice, pers. comm. 2005).

Although this species has adaptations to withstand periodic, low-intensity flooding, the population in Sycamore Canyon has experienced population fluctuations, some of those associated with flood events. In 1982, a status report documented only 100 plants from Sycamore Canyon (Toolin 1982). Following severe winter flooding in 1993, a large portion of a monitoring plot that had been established on a floodplain terrace washed away, and the overall population within Sycamore Canyon declined to 15–30 plants (Falk 1993). Gori *et al.* (1992) estimated that there were 1,400 ''individuals'' in Sycamore Canyon before the heavy rains of 1993. The population in Sycamore Canyon has been monitored sporadically since 1993. Bertelsen (1997) recorded approximately 500 individuals. Brooks (1999) found 194 plants, including a small group (15) in Peñasco Canyon. A U.S. Forest Service biologist reported seeing some patches of Gentry indigo bush while surveying for Sonora chub in the canyon (2000, 2001). In three separate surveys over consecutive years the numbers of plants varied. Baker (2003) found 100 plants, and Reina and Van Devender found 36 plants in 2004 (Baker 2005). In 2005, Baker recorded approximately 450 plants, with many seedlings and some resprouts from plants thought to be dead (bare branches, no leaves). The latter survey was done in May 2005, when the biologists (including Service staff) knew the plants would be flowering, allowing easy identification of Gentry indigo bush. Additional surveys in Sycamore Canyon were conducted in April and May (Darling 2005). These surveys were conducted on four separate visits, and approximately 922 plants were found. Of note was the location of many plants on talus slopes out of the floodplain. Due to variation in survey methodologies, the current estimate for Sycamore Canyon is thus between 450 and 922 plants. Schmalzel (2005) observed during his surveys that plants were associated with grussy colluvium (*i.e.*, a loose accumulation of particles from decomposing granite) found on the sides of canyons, and he believed that locations in the floodplain may not be as important as those on the sides of the canyon. Schmalzel's 2005 observation is consistent with the results of Darling's 2005 survey report where Gentry indigo bush was found on talus slopes in Sycamore Canyon.

The distribution of sub-populations in Sycamore Canyon has changed over time. The overall population in Sycamore Canyon is best described as a metapopulation, that is, a population consisting of many ''local'' sub-populations or patches. Sub-populations may undergo extirpation (*i.e.*, loss) while others are created, such that distribution within the larger population is dynamic in nature and the species persists at a larger scale— in this case, throughout the canyon. This pattern follows Levins' dynamic metapopulation model (1969, 1970) describing habitat patches, or islands, with some of the patches disappearing but then undergoing recolonization from the remaining patches. For instance, a flood event could remove some sub-populations from the canyon, but the remaining sub-populations would persist and serve as a source of recolonization.

As a result, it is very difficult to track individual patches in the canyon over time. Early monitoring efforts documented the location of patches, but successive surveyors have found that previously documented patches are not always present. This indicates that patch location is very dynamic in the canyon. Based on the Baker 2005 survey, the densest plant patches are located in the central portion of the canyon (centered around where Peñasco Canyon enters into Sycamore Canyon) and areas directly to the north and south. The dynamic nature of plant distribution is likely influenced by drought and flooding, which is not uncommon for plants found in canyons subject to episodic climate events.

Additional Survey Work in Arizona and Mexico

Gori *et al.*(1992) status report included a review of historic localities in the United States and areas of suitable habitat in Arizona and Mexico, except areas within the Tohono O'odham Nation. No plants were found in the Coyote Mountains, and the authors surmised in the status report

that the population was extirpated, possibly due to past grazing practices.

In Mexico, surveys were conducted in areas not previously known to support Gentry indigo bush plants, but where the habitat appeared to be suitable. No plants were found in the areas surveyed, which included canyons in the following mountain ranges in Sonora, Mexico: Sierra Cibuta, La Colorada, Sierra el Tigre, Sierra los Ajos, Sierra Azul, Arroyo Las Fresnos, Sierra San Diego, La Angostura, and Sierra San Luis (Gori *et al.* 1992).

Extensive survey work has also been completed in other areas of habitat in Arizona that appear to be suitable, but that were not known to have ever supported Gentry indigo bush. Specifically, in Arizona in 1991, 1998, 2003, and 2005, surveys were conducted with negative results in all efforts. Areas surveyed include the Atascosa/Pajaritos (Upper Peck Canyon, California Gulch, Holden Canyon, and Rock Corral Canyon), the Baboquivaris (Thomas and Sabino canyons), and the Patagonia Mountains (Harshaw Creek, Finley and Adams canyons, Flux Canyon, and upper Mowry Wash) (Gori *et al.* 1992). Gentry indigo bush was not found in Atascosa, Pen~asco, or unnamed canyons in the Atascosa Mountains (Baker 2005), or in the upper reaches of Sycamore Canyon (Baker 2003). However, in 2005, Gentry indigo bush was located on the Tohono O'odham Nation (Schmalzel 2005). The Tribe should be contacted for additional information, if needed.

In 2005, Dr. Tom Van Devender and Ana Lilia Reina conducted extensive surveys for Gentry indigo bush in Mexico. From April through June, they visited 22 potential sites in 7 mountain ranges in Sonora, Mexico. The ranges surveyed west-southwest of Sásabe to southwest of Cananea were the Sierra El Humo, Sierra Las Avispas, Sierra Cíbuta/Guacomea, Sierra Jojoba, Sierra de Los Pintos, Sierra de La Madera, and Sierra Azul. Sites surveyed were 1,045 to 1,518 m (3,400 to 5,000 ft) in elevation and mostly in canyons in desert grassland/oak woodland transition or oak woodland (Van Devender 2005). They also revisited the 2004 location of Gentry indigo bush in the Sierra El Humo, an isolated mountain range near the Arizona border in the Municipio of Altar, and a total of 126 plants were found in 6 patches in an unnamed canyon. A new population was located in the Sierra de La Madera. This mountain range is located east of interstate MEX 15 between Imuris and Magdalena. Plants were found in Cajón El Chorro, within the Sierra de La Madera. A total of 98 individuals were found in 2 patches. Van Devender returned to the 1995 Huásabas site and documented 170 Gentry indigo bush plants. This site is atypical, as the plants were found under Chihuahua oaks on gentle north-facing slopes, not in canyon bottoms (Van Devender 2005). Overall, surveys in Mexico in 2005 documented 394 Gentry indigo plants at 3 locations. No other populations of Gentry indigo bush were located, and no historical records are known from any of the other 19 sites surveyed (Van Devender 2005).

In summary, Gentry indigo bush remains a rare, narrow endemic (*i.e.*, restricted to a particular region) in terms of its overall numbers, number of populations, and geographic distribution. Dedicated, extensive surveys conducted over the years have documented few new locations, and all known populations are small. No new locations have been found in Arizona despite fairly extensive surveys of apparently suitable habitat. In Sycamore Canyon, the overall population has fluctuated greatly since surveys began, and recovery from flooding in 1993 has been slow. Currently, the population constitutes only 32 to 67 percent of the pre-flood numbers. Most of the older plants are gone but there are many seedlings, which provides some evidence of the species' resiliency and ability to persist. However, it is not known how many of these seedlings will survive and contribute to the reproductive potential of the population. The limited demographic monitoring data show higher mortality in the small age classes (Gori *et al.* 1992). In some locations, larger and older plants were found completely out of the floodplain and up against the canyon walls, which provides some assurance that not all of the species' habitat is susceptible to flooding. The species has persisted at known locations for some time (based on herbarium records), and it seems likely that other areas that may support the plant were overlooked in previous survey efforts.

Previous Federal Actions

Gentry indigo bush was determined to be a candidate species as published in the 1980 Plant Notice of Review (45 FR 82480). A species with candidate status is one for which we have collected and assessed information sufficient to propose listing the species. On April 2, 1998 (63 FR 16217), we removed the Gentry indigo bush from candidate status. The reasons supporting removal from the candidate list were (1) the taxon was more abundant or widespread than previously believed or not subject to any identifiable threats; and (2) the Service had insufficient information on biological vulnerability and threats to support issuance of a proposed rule to list. Following receipt of the 2002 petition, and pursuant to a stipulated settlement agreement, we published a 90-day finding on February 2, 2005 (70 FR 5401), finding that the petitioners had provided sufficient information to indicate that listing of the Gentry indigo bush may be warranted. In order to use the best scientific and commercial information available to determine whether listing of the species was indeed warranted, two public comment periods were opened. The initial comment period was opened by the February 2, 2005, 90-day petition finding for a period of 60 days, through April 4, 2005, and the comment period on the 90-day finding was reopened on July 25, 2005 (70 FR 42520), for an additional 10 days.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR 424, set forth procedures for adding species to the Federal List of Endangered and Threatened Species. In making this finding, information regarding the status and threats to this species in relation to the five factors provided in section 4(a)(1) of the Act is summarized below.

In general, we have focused much of the five factor discussion below on the Sycamore Canyon population in Arizona because we have specific information about it. Where we have information for populations in Mexico and on the Tohono O'odham Nation, we have specifically addressed that below.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Modifications and alteration of Gentry indigo bush habitat are associated with watershed degradation, roads, recreational activities, undocumented immigrant traffic and associated U.S. Border Patrol activities to control illegal entry, and the spread of invasive plant species. All of these factors have the potential to alter and degrade the species' habitat.

Watershed Degradation

In general, human-related activities can have an adverse impact on the arid watersheds of the Southwest (Bahre and Bradbury 1978; Bahre 1995; Hadley and Sheridan 1995). Such impacts may include erosion of stream channels and loss of herbaceous vegetation caused by overgrazing, altered fire regimes, mining

runoff, off-road vehicle use, road construction, and other anthropogenic activities, and all have contributed to reduced quality and quantity of riparian and wetland habitat (Hendrickson and Minckley 1984; Bahre 1995; Hadley and Sheridan 1995; Ohmart 1995; Whelan 1995; Debano and Neary 1996; Belsky and Blumenthal 1997; Wang *et al.* 1997).

Watershed degradation may be a concern in Sycamore Canyon, which is a small canyon cutting through rugged hills located within the Coronado National Forest, Nogales Ranger District. Special protection for the Canyon is provided by inclusion within the Goodding Research Natural Area (RNA) and the Pajarita Wilderness. Lefevre (2000) concluded that human influence on Sycamore Canyon is mostly related to downcutting of the channel system, sediment movement, and sediment yield to the stream, and has resulted in erosion rates above that which would be expected under unroaded, unmined, and ungrazed conditions. Within the Goodding RNA, mining, roads, and grazing are prohibited, as discussed below. However, such activities occur in the hills outside of the Canyon and may influence conditions within it.

Grazing Effects on Watershed

The Sycamore Canyon watershed is 6,737 hectares (ha) (16,648 acres (ac)) in size (Lefevre 2000). All but 874 ha (2,160 ac) are within grazing allotments. The majority of those lands are on the Coronado National Forest, where many different types of uses are authorized (*e.g.*, livestock grazing, mining, roads, wilderness). Livestock grazing is not permitted within the boundaries of the RNA, including Sycamore Canyon.

The Bear Valley grazing allotment, which is located in the hills surrounding Sycamore Canyon, is 9,197.5 ha (22,710 ac) in size. Site-specific soil surveys (U.S. Fish and Wildlife Service 2002) indicate that 75 percent of the allotment is in satisfactory condition, 16 percent is considered impaired, 8 percent is unsatisfactory, and 2 percent is in unsuitable condition. Where soils were found to be impaired, it was attributed to lack of vegetative ground cover. In addition, the soils had altered structure, which inhibits water infiltration (Lefevre 2000). Lack of ground cover and compaction of the soil can lead to increased quantities of sediment and water flowing into the canyon. Between 1983 and 1997, the percent of ground cover has increased from 29 percent to 33 percent on this allotment, indicating that conditions are improving (Lefevre 1999). The majority of this allotment is in satisfactory condition and on an upward trend. The number of permitted livestock on this allotment has decreased dramatically since 1908, when 1,000 cows were allowed. The numbers were reduced to 650 in 1917, 520 in 1930, and stocking was reduced to almost zero in 1961 due to range deterioration. Due to improvements in range condition the allotment is now permitted for 350 cattle. The overall reduction in livestock numbers from 1,000 to 350 cows indicates that the current management of this allotment is contributing to the overall improvement of watershed conditions, and with improved watershed conditions, the amount of sediment entering into Sycamore Canyon would be reduced, resulting in improved habitat conditions for Gentry indigo bush. There will be continued sediment and precipitation run-off associated with the impaired soils due to livestock grazing, but the amounts are difficult to quantify and may not be significant.

According to Van Devender (2005), none of the three Mexican populations are accessible to cattle, so grazing does not constitute a threat there. On the Tohono O'odham Nation, the influence of grazing is unknown, but the species is still present (Schmalzel 2005).

In summary, the watershed condition of the Bear Valley livestock grazing allotment has been improving since the early 1900s. There has been an overall decrease in the permitted numbers of cattle on the Bear Valley allotment and ground cover has improved to the point where 75 percent of the allotment is in satisfactory watershed condition. The continuation of these sound livestock-management practices will likely result in improved habitat conditions for Gentry indigo bush. Sediment will continue to move off the allotment, due to the 16 percent of impaired soils, but the amounts are difficult to quantify and may or may not result in significant effects to the ecosystem. The Mexican populations are not subjected to grazing, but watershed conditions there are unknown. Similarly, there is little information available from the Tohono O'odham Nation.

Roads

Many roads are present in the Sycamore Canyon watershed, and they have contributed to overall watershed degradation. However, it is not known how these roads affect ongoing erosion and, more importantly, how much of the eroded material ends up in the Sycamore Canyon drainage. The amount of sediment and surface runoff within the Sycamore Canyon watershed may affect Gentry indigo bush and its habitat. The plants have adaptations for persisting in spite of flood events that have caused sediment to enter Sycamore Canyon, but it is unknown whether a threshold exists which, if crossed, may eliminate the metapopulation from the canyon. However, as noted above, the species does have the ability to recolonize after flood events, and plants located out of the floodplain and on associated talus slopes may provide the source for recolonization of the plants within the floodplain. The U.S. Forest Service maintains a road density of 0.58 km/km^2 (0.93 mile/mi^2) within the watershed, and considers these roads to be ''a primary source of erosion and sediment'' (Lefevre 2000). This translates to 38.8 km (24.1 mi) of roads within the watershed, occupying 22.2 ha (55 ac) (Lefevre 2000).

The U.S. Forest Service has no immediate plans to address the effects of roads in the Sycamore Canyon watershed; thus sediment deposition and scouring in and along the stream channel could still occur. Again, we do not know if the sediment production associated with the roads is resulting in significant effects to the ecosystem and the habitat of Gentry indigo bush. However, we do know that the metapopulation has persisted in the canyon under the current road conditions. We also note that the U.S. Forest Service closed unauthorized roads that crossed the stream at several locations near the mouth of Sycamore Canyon and built a bridge where Forest Road 39 crosses Sycamore Creek, thus eliminating some erosion threats associated with roads. It is not known whether roads are a threat to either the Mexican or Tohono O'odham populations, but we have no evidence that roads have adversely affected the species there.

Recreation

Sycamore Canyon is close enough to Tucson and Nogales, Arizona, to make it a popular destination for hiking and birding. The flora of the canyon supports 624 species of vascular plants, and birders come from all over the world to see various species considered rare in the United States. Because there are no designated trails within the RNA, trampling and compaction of soils from the resulting foot traffic can negatively affect the Gentry indigo bush in Sycamore Canyon. Gentry indigo bush plants grow on the floodplain terraces where hikers often create trails to avoid walking in the stream. Due to its narrow width, there are limited terraces in the canyon intensifying the use of Gentry indigo bush habitat as places to create trails. Many of the remaining plant

locations are near recreational trails, and plants were found that had been trampled (Falk, pers. obs. 2005). Even when the plants are flowering, they are not particularly showy and are quite fragile. When they are not flowering, they do not stand out, and it is fairly easy to step on them without noticing. Although no overnight camping is allowed in the RNA, there is unauthorized camping occurring, as evidenced by fire rings and obviously trampled areas where human activities had taken place. These activities degrade habitat and may reduce the areas potentially occupiable by Gentry indigo bush. They may also alter and reduce the amount of habitat available for plant germination. This in turn affects the ability of the plant to reoccupy sites after disturbance events.

We know of no plan to address the effects of recreation in this area or the larger watershed. The degree to which recreational activities may affect the population in Sycamore Canyon is not known. However, recreation has been ongoing in the canyon in the past, and the Gentry indigo bush continues to persist and increase in number; therefore, we do not believe recreation is affecting the overall population in Sycamore Canyon. We have no evidence that recreation is adversely affecting the Mexican or Tohono O'odham populations.

Undocumented Immigrant Traffic/U.S. Border Patrol Actions

The cutting and/or disrepair of the border fence along the U.S.-Mexican border by undocumented immigrants is an ongoing concern due to the potential for cattle trespassing and trampling of habitat. It is very difficult to monitor the status of this fence because it is a long hike or horse ride of over six miles down the canyon. The U.S. Forest Service does not monitor this fence as part of its allotment monitoring. It is possible that the fence could be cut or knocked down and livestock could enter the canyon without detection; however, the fence has apparently excluded trespass cattle since 1998. Given the seemingly slow recolonization of the Gentry indigo bush population in Sycamore Canyon since the 1993 flood, a single incursion of cattle could have a significant effect on individual clusters of plants in the canyon bottom. Currently, the majority of the sub-populations are in areas that would be accessible by cattle from the southern end of the canyon, absent a functional fence. On the other hand, the metapopulation has persisted even through times when the fence was down. We do not know what the long-term effects to the metapopulation would be from livestock grazing, but it seems unlikely that the entire metapopulation in Sycamore Canyon would be severely affected by occasional use by trespass livestock.

Undocumented immigrants crossing the border into the United States from Mexico cross through Sycamore Canyon. Although we did not detect high levels of use during our 2005 survey, we did observe trash and many foot trails in canyons and uplands associated with Sycamore Canyon (*i.e.*, Peñasco, Atascosa, Hank, and Yank Canyons). Human traffic associated with this activity in the canyon bottom may directly trample plants and is likely contributing to Gentry indigo bush habitat degradation. It follows that areas receiving heavy use will be under surveillance by the U.S. Border Patrol. The U.S. Border Patrol's activities could also create additional disturbance by using the same foot trails, as well as increasing use of existing roads. We do not know if these types of activities are likely to increase in the future and cause detrimental effects to Gentry indigo bush and its habitat. Undocumented immigrants may also set fires. Although these fires are usually accidental (*e.g.*, an escaped campfire), they may be the ignition source for a future grassland fire in the watershed.

The border fence in Sycamore Canyon has remained intact since 1998. Border activity ebbs and flows, and it is difficult to predict where increased activity will take place. Currently, the level of border activity is not threatening the continued existence of the plant in Sycamore Canyon.

Invasive Plants

The invasive buffelgrass (*Pennisetum ciliare*) is used throughout Sonora, Mexico, as a pasture grass, and large natural grassland areas have been converted to buffelgrass. Buffelgrass lines the major highway in Sonora to the U.S. border. Noxious weed seeds can be spread by the wind, on the soles of shoes, and in the tire treads of vehicles. Riparian areas can also function as dispersal corridors for the movement of invasive plant species (Stohlgren *et al.* 1998; Parendes and Jones 2000). With the increase in border activity, it is probably only a matter of time before this highly invasive grass species is found in Sycamore Canyon. The U.S. Department of Agriculture's Agricultural Research Service has developed and released a cold-tolerant variety of buffelgrass, ''Frio'', which is intended to be used at higher elevations and in regions where current buffelgrass cultivars experience winter damage (Hussey *et al.* 2005). These cultivars will increase the potential area of invasion.

Buffelgrass grows very quickly and out-competes native grass for water and nutrients. Once stabilized, it rapidly becomes the dominant plant cover. Should it become the dominant plant species on floodplain terraces, it could replace Gentry indigo bush along with other native riparian species in Sycamore Canyon, but it is not known to occur there at this time. We do not know if buffelgrass is found near the populations of Gentry indigo bush in Mexico, but it may be a potential threat to these populations in the future since so much planting of the grass has taken place in Sonora, Mexico. As of 1997, over one million ha (2,471,000 ac) of desert and thorn scrub in central Sonora had been cleared to plant bufflegrass (Van Devender and Felger 1997), but we do not know how close it is to invading canyons occupied by Gentry indigo bush.

Baker (2005) found at least one, and possibly two, species of *Pyracantha* in Atascosa and Sycamore canyons. This nonnative, aggressive species, should it become established and spread in Sycamore Canyon, could potentially reduce suitable habitat for Gentry indigo bush.

Many areas of Sonoran desert grasslands in southeast Arizona have been colonized by Lehman lovegrass (*Eragrostis lehmanniana*), an invasive species from South Africa. This grass has become so firmly established in southern Arizona that there may be no feasible control for it. Lehman lovegrass produces more fine fuel than native grass species (Cable 1971; Cox *et al.* 1984), leading to increased fire spread. Lehman lovegrass also increases after fire (Ruyle *et al.* 1988; Sumrall *et al.* 1991). Currently, the Bear Valley allotment does not seem to have continuous patches of Lehman lovegrass, so the effects from an altered fire regime due to its presence may not pose a threat to Gentry indigo bush. If the density and distribution of Lehman lovegrass were to increase on the allotment, then more frequent and higher intensity fires would be expected. This could potentially result in increased erosion and precipitation run-off, possibly leading to more frequent flood events in Sycamore Canyon. More frequent and greater intensity flooding may not allow for the recolonization of habitat and reestablishment of sub-populations in Sycamore Canyon during flood-free intervals, resulting in overall habitat and population reduction.

Establishment of these nonnative grasses in Sycamore Canyon or other

occupied habitat could compromise habitat quality and possibly endanger the long-term survival of metapopulations because the change in fire frequency and intensity could increase the frequency and intensity of flood events, placing sub-populations at increased risk. However, the threats from invasive species are considered to be only potential at this time, as there are no populations of the grass species present in Sycamore Canyon. We do not know if the populations in Mexico or on the Tohono O'odham Nation are threatened by invasive species.

In summary, there are ongoing and potential threats to the habitat of Gentry indigo bush in Sycamore Canyon. Many of the threats identified have been minimized (*e.g.*, protection from livestock grazing, reduction in livestock numbers, overall improvement in watershed health) and while other threats are possible in the future, there is no evidence that they are currently affecting the population, and certainly not at a level that threatens the species (*e.g.*, invasive species, recreation impacts, undocumented immigrant traffic, U.S. Border Patrol activities, and wildfire). Because they occupy similar habitat (*i.e.*, canyon bottom), the populations in Mexico may be affected by the threats discussed in this section; however, due to a lack of detailed information regarding these sites, there is no direct evidence of threats to Mexican populations. The status of the populations in Mexico and on the Tohono O'odham Nation are not known, but some of the populations have persisted over time.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There are no known threats to Gentry indigo bush from over-utilization for commercial, recreational, scientific, or educational purposes.

Factor C: Disease or Predation

Grazing Effects on Plants

This section discusses the threat from cows directly eating the plant. Gentry indigo bush plants are palatable, as are most *Dalea* species. Gori *et al.* (1992) concluded, ''Our surveys of Sycamore and Mendoza Canyons lead us to believe that grazing constitutes a threat to *D. tentaculoides*. We observed direct evidence of livestock browsing on, and even uprooting, the species in lower Sycamore Canyon where trespass cows from Mexico enter the canyon up to an impassable narrows.''

As discussed above, Sycamore Canyon is found within the Goodding RNA and the Pajarita Wilderness within the boundaries of the Coronodo National Forest, Nogales Ranger District. Livestock grazing is not permitted within the boundaries of the RNA, but trespass cattle use has been a sporadic problem (U.S. Department of Agriculture 1998). Trespass cattle can enter the canyon from the mouth of the canyon at the northern end, and also from the southern end on U.S.-Mexico border. The sides of the canyon are generally too steep for livestock. Cattle have been observed in the northern reaches of the canyon (Brooks 1999), and Brooks noted heavy cattle use in the southern end of the canyon (i.e., below ''the narrows'') most likely attributable to trespass livestock from Mexico. In 1997, the U.S. Forest Service proposed a set of actions in Sycamore Canyon to protect the federally threatened Sonora chub (*Gila ditaenia*). One of those actions included building a fence at the northern portion of the canyon to restrict livestock access to the riparian areas. As long as this fence is maintained and remains effective, no direct threat of cattle in the upper reaches of Sycamore Canyon exists.

In the lower reaches of Sycamore Canyon, trespass cattle from Mexico may present another problem. Although the U.S.-Mexican border fence had been in a state of disrepair,in the fall of 1998, 2.4 km (1.5 mi) of fence was repaired and information provided to us during our status review of the species indicates that the fence is currently functional in preventing livestock trespass and has not been recently cut (Parker 2005). Thus, while sporadic grazing was historically considered a potential threat to Gentry indigo bush, we do not believe that trespass cattle from Mexico pose a threat at this time in Sycamore Canyon. This determination is based on the protective status of the area as an RNA and the measures taken by the U.S. Forest Service to construct and maintain a fence preventing cattle from entering the canyon from Mexico.

We know that livestock grazing occurs on Tohono O'odham Nation in the general area where the plants were known to be in the southern Baboquivari Mountains, but have no recent information on plant numbers. We are currently working with the Nation to gather information on this population. We anticipate that, if livestock grazing is determined to be a concern, we can work cooperatively with the Nation to resolve those issues.

We do not know if the populations in Mexico are affected by livestock grazing; nothing was reported on the grazing regime in the areas surveyed. Van Devender (2005) noted that the populations he found were in areas not accessible to livestock.

Gentry indigo bush is palatable to other species beside livestock. Brooks (1999) provided one observation of a plant being almost totally eaten by a rabbit. Schmalzel (2005) also noted one Gentry indigo bush that had evidently been clipped at the base by a valley pocket gopher (Thomomys bottae), but we do not consider this to be a major threat. We acknowledge that rabbits, gophers, and other herbivores may eat plants, but we do not think this constitutes a major threat to the species because of the size of mature plants and the abundance of other herbaceous plants in the canyon available for food.

We know of no diseases threatening this species.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

The population in Sycamore Canyon is on the Coronado National Forest and subject to the general Federal regulations of the National Forest System. Gentry indigo bush is on the Coronado National Forest's Sensitive Species List. Populations that may be present on the Tohono O'odham Nation are not protected by any regulation of which we are aware. Mexican populations have no protection because they are on private land and are afforded no protection under Mexican laws. The Arizona Native Plant Law (State of Arizona) does consider this species as highly safeguarded, and thus a permit is required from the Arizona Department of Agriculture to salvage the plant; however, no other protection is afforded to the species or its habitat.

U.S. Forest Service (Sycamore Canyon, AZ)

The metapopulation of Gentry indigo bush in Sycamore Canyon is within the Goodding RNA and the Pajarita Wilderness. There are no other locations on U.S. Forest Service land. The U.S. Forest Service has stated that Gentry indigo bush is afforded a high level of protection because it shares its habitat with critical habitat of the federally listed Sonora chub. The U.S. Forest Service has done much work to improve the habitat of Sonora chub, including removal of a road at the mouth of Sycamore Canyon, protection of riparian areas at the northern end of Sycamore Canyon, and the expansion of the Goodding RNA. These actions have contributed to improvement of Sonora chub habitat and are likely to improve Gentry indigo bush habitat, as discussed above. Many activities are prohibited within the RNA; livestock grazing,

timber harvest, and overnight camping are examples. A mining withdrawal has also been completed for lands within the RNA, for a period of 25 years. In addition to the Sonora chub, the canyon also supports populations of the federally listed Chiricahua leopard frog (*Rana chiricahuensis*) and Mexican spotted owl (*Strix occidentalis lucida*).

The surrounding watersheds are also under U.S. Forest Service management. A multiple-use policy allows for grazing, recreation, and other activities that may be affecting the habitat of Gentry indigo bush. These issues were discussed under Factors A and C above.

In summary, the U.S. Forest Service has completed a number of conservation actions in Sycamore Canyon that have improved habitat for Gentry indigo bush. Road closures and the protection of riparian areas at the canyon mouth have undoubtedly increased the overall health of the riparian ecosystem in the canyon. We believe that U.S. Forest Service actions and the amount of protection the canyon receives by virtue of its wilderness and RNA designation will promote the long-term conservation of Gentry indigo bush in Sycamore Canyon.

The Tohono O'odham Nation

The Tohono O'odham Nation has not drafted specific regulations to address sensitive species on their sovereign lands. We have a Statement of Relationship with the Nation, and provide technical assistance with wildlife and plant issues at their request. The Nation is currently working with us on allowing us access to the Baboquivari Mountains so that we may assist them in survey and assessment of their Gentry indigo bush populations.

Mexico

Three locations of Gentry indigo bush have been documented in Mexico. We have basic information (*e.g.*, plant community, associated plant species, elevation, and substrate) and population estimates for these sites. We are not aware of any protection for these areas, but Van Devender observed during his 2005 survey work that the sites do not have obvious direct threats. Furthermore, all of the sites are in remote locations and in canyons with no livestock access (Van Devender 2005).

Factor E: Other Natural or Manmade Factors Affecting the Continued Existence of the Species

The known extant Gentry indigo bush populations are small, isolated, and threatened by unpredictable variation in demographic and environmental characters (*i.e.* flooding). Genetic factors, such as reduced genetic variation due to small population size, may also contribute to this species' overall status. Inbreeding depression and loss of genetic diversity may occur in small populations of less than a few hundred individuals; such loss may reduce the fitness of individuals and the ability of the population to adapt to change (Frankel and Soule 1981). Both of these genetic considerations result in an increased likelihood of extirpation (Lande and Barrowclough 1987). Climate change may influence precipitation patterns in ways that could affect the long-term persistence of the metapopulations.

Flooding

The past movement of water and sediment in Sycamore Canyon has affected the plants and their habitat. After the 1993 El Niño winter rains, most of the monitoring plot was washed away, and the then-known overall plant population declined dramatically, with more than 90 percent of the known individuals washed away or covered with sediment. Recolonization has slowly occurred; at last count there were 450 to 922 plants recorded in Sycamore Canyon (Darling 2005), fewer than the estimated 1,400 that were documented in 1992.

Lefevre, a U.S. Forest Service hydrologist (1999), notes that the changes observed in Sycamore Canyon after the 1993 flood were, in his professional opinion, geologic in nature. Large flood events (*e.g.*, greater than the 25-year event) and their effects on channel morphology will likely overshadow any management activity of the U.S. Forest Service.

In summary, above-average flood events (greater than the 25-year event) will likely affect the dynamics of the metapopulation in Sycamore Canyon, but U.S. Forest Service actions are not likely to influence or minimize the effects from such events. The species does have the ability to recolonize after flood events, and plants located out of the floodplain and on associated talus slopes (*i.e.*, the sides of the canyon) may provide the source for the recolonization of the plants in stream habitat.

Population Size and Stochastic Events

Estimated numbers of the metapopulation in Sycamore Canyon have fluctuated dramatically since the early 1990s. The sub-populations had seemingly been reduced to very low numbers in 1993, after the canyon was subjected to a large flood event. Since that time, overall numbers and patches have been increasing. In 2005, we observed many seedlings and resprouts, alleviating some of our concern regarding the plant's seemingly low reproductive output. We still do not know the environmental factors that allow for successful seed germination, and do not know how many seedlings will survive. We observed no seedlings away from patches, although some patches contained only a few larger plants and were dominated by seedlings.

This species could potentially be negatively affected by environmental stochasticity (variations over time in the population's operational environment) and natural catastrophes (Menges 1991). The minimum viable metapopulation (MVM) size is an important estimate of the minimum number of interacting local sub-populations necessary for the long-term persistence of a metapopulation (Hanski 1999). In general, 15 '' 20 well-connected patches are required for MVM (Maschinski, in press). Baker (2005) found 12 patches in Sycamore Canyon, but that is only an estimate from one of the five known populations. There were likely more patches than he detected. More consistent monitoring could help us determine the patch dynamics of Gentry indigo bush more accurately. A decrease in the overall number and size of patches, and a lack of recolonization of extirpated patches, could indicate that the metapopulation is not at equilibrium.

The most likely adverse scenario in Sycamore Canyon is that of catastrophic flooding. Increased rainfall combined with an altered hydrograph in Sycamore Canyon may result in many patches being washed out. Long-term drought, such as the one the region is experiencing currently, may affect the species' ability to recolonize vacant patches. In Sycamore Canyon, the combination of small patch size, uncertain persistence of the patches, highly variable overall number of patches, and a highly dynamic and uncertain environment due to flooding and drought could make this population vulnerable to extirpation, although it has continued to persist despite such climatic events.

The species is located in at least five locations, reducing the risk of stochastic events affecting all of the known populations simultaneously. The population in Sycamore Canyon, despite a severe reduction in overall numbers, still persists and is recolonizing the canyon. Recent observations of seedling recruitment and resprouting indicate that the metapopulation can recover from

environmental stochastic events. Given the population's persistence in Sycamore Canyon, we do not believe that its continued existence is threatened now or in the foreseeable future.

Genetic Factors

Harmful genetic effects, such as genetic bottlenecks and founder effects, are often associated with small plant populations (Hedrick and Miller 1992). A genetic bottleneck is a significant reduction in the genetic diversity of a population resulting from a significant reduction of the number of individuals of a species in a specific place or time. It is often associated with a stochastic event and can result in a loss of genetic diversity. The founder effect (Mayr 1963) refers to the establishment of a new population from only a few colonizing individuals, which may represent only a small portion of the overall genetic variation of the original population. Reductions in genetic diversity from these and other causes can have profound effects on both short- and long-term population survival, as genetic variation is related to a population's ability to survive stochastic events (Huenneke 1991; Rogers and Montalvo 2004; Falk *et al.* in press). In Sycamore Canyon, the small number of individuals, small size of the metapopulation, and the type and severity of environmental factors to which the metapopulation is exposed could influence the genetic diversity of the metapopulation.

The ability of a species to persist over time is related, in part, to genetic variation in a population, which provides the basis of adaptation to changing environments. The greater the heterozygosity (number of different types of alleles) present, the higher the probability that at least some plants in a population will be able to adapt to changing circumstances (Huenneke 1991; Reed and Frankham 2003). As populations become depauperate (less variation) in their genetic make-up, the ability of the populations to adapt to changing environmental factors, like climate change or changes in the local environment, may decrease.

The long-term persistence of a population is also related to the fitness of the individuals within the population, where fitness is typically measured in terms of survival and reproduction. Inbreeding depression is a relative decrease in fitness of offspring resulting from either selfing (pollination within the same plant as opposed to between two different plants) or mating between closely-related individuals compared with outcrossed individuals (Barrett and Kohn 1991). The reduction in fitness is associated with a higher rate of expression of recessive and often lethal alleles (parts of genes that control certain characters, *i.e.*, flower color) in a population. This condition leads to an overall reduction of fitness in a population until the population cannot produce viable offspring. We do not know if this is a factor for Gentry indigo bush because we have not identified the type of breeding system (*e.g.*, obligate outcrosser, selfing, or combination). Thus, we have no information to indicate that genetic factors and small population size are a threat to Gentry indigo bush now or in the foreseeable future. Further, we have no documentation that this species historically persisted in significantly higher numbers than it does today, so its rarity is not necessarily an indication of excessive vulnerability to extinction.

Climate Change

Mean annual temperatures rose 1.1–1.7 degrees Celsius (C) (2.0–3.1 degrees Fahrenheit (F)) in the American Southwest in the 20th century, and are predicted to rise 4.5–6.1 degrees C (8.1–11.0 degrees F) in the 21st century. Predictions of changes in precipitation are less certain; however, some models predict as much as a doubling of annual precipitation, with the largest increases in winter precipitation (Southwest Regional Assessment Group 2000). But these predictions contrast with current trends of a warming North Atlantic and cooling tropical Pacific, with associated changes from a relatively wet period to drought, insect outbreaks in Southwestern forests, and increasing wildfires (Patterson 1997; Betancourt 2004). Some models predict dramatic changes in Southwestern vegetation communities as a result of climate change (Thompson *et al.* 1997). Climate change can occur abruptly, with associated major changes in the environment (National Academy of Sciences, Committee on Abrupt Climate Change 2002). Climate change could affect metapopulations of Gentry indigo bush in unpredictable ways. For example, changes in precipitation may increase the frequency and magnitude of flood events, possibly affecting the distribution and persistence of patches in occupied habitat. Rainfall patterns may shift towards more summer precipitation and less winter precipitation. The germination of seeds may be linked to seasonal rainfall events, and changes in rainfall patterns may affect the population dynamics of this species. We have no information to indicate that climate change constitutes a threat to Gentry indigo bush now or in the foreseeable future.

In summary, Gentry indigo bush remains a rare, narrowly distributed endemic plant species throughout its range in southern Arizona and in Mexico. Extensive survey work in the United States and Mexico has increased the documentation of populations by one and reconfirmed the existence of two populations in Mexico. In total, there are approximately 1,400 individuals, distributed among 5 sites. There are 2 confirmed populations in the United States, containing over 66 percent of the known individuals. At this time, the majority of Gentry indigo bush in the United States is located within Sycamore Canyon; we do not have an accurate assessment of the numbers of Gentry indigo bush on the Tohono O'odham Nation. We have no information indicating that populations in Mexico or on the Tohono O'odham Nation are experiencing any direct threats. The populations, based on observations of the Sycamore Canyon metapopulation, have the ability to recover from floods and drought. We have seen seedlings and plants resprout, alleviating our concern regarding the plant's ability to reproduce and recover from flood events and sediment deposition. Threats to the Sycamore Canyon population have been minimized by U.S. Forest Service actions, and ongoing activities are not immediately threatening the population.

Finding

We have carefully assessed the best scientific and commercial information available regarding past, present, and future threats faced by the species. We reviewed the petition, available published and unpublished scientific and commercial information, and information submitted to us during the public comment periods on our 90-day finding. This finding reflects and incorporates information we received during the public comment periods. We also consulted with recognized plant experts, including those most familiar with this species, and other Federal resource agencies. On the basis of our review, we find that the petitioned action of listing the Gentry indigo bush is not warranted.

In making this finding, we recognize that one historical population in the United States has been extirpated and is presumed lost. We also recognize that populations are still present on the Tohono O'odham Nation, but that those populations are under the management of a sovereign nation and subject to their laws. The same is true for populations in Sonora, Mexico. There are ongoing

activities and natural events that may be affecting the habitat and reestablishment of the species. Other threats, like undocumented immigrant traffic, are larger than one agency's jurisdiction. However, we believe that existing regulatory mechanisms are sufficient to protect the species. The overall existing management of the U.S. Forest Service is protecting much of the habitat in Sycamore Canyon. We also acknowledge that, due to small population size, demographic or genetic factors may apply to each of the locations in Arizona and Sonora, Mexico, but we have no genetic information to determine whether this is indeed the case.

We conclude that the Gentry indigo bush does not warrant listing at this time. In order to make a warranted finding, the species must, at a minimum, meet the definition of a threatened species. In accordance with section 3(19) of the Act, a threatened species is one which is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Based on all the information we have gathered and reviewed, we do not conclude this to be the case for the following reasons.

Populations have persisted in all but one of the known locations over time. A new population was located in Mexico and offers hope that there may be more populations located with additional surveys. Areas that were previously overlooked as suitable habitat outside of the floodplain appear to support Gentry indigo bush. Thus, populations may not be as vulnerable to extirpation from flood events as previously thought since the species does have the ability to recolonize after flood events, and plants located out of the floodplain and on the sides of the canyon could provide a source for the recolonization of plants in stream habitat. The largest known population occurs in Sycamore Canyon within the Goodding RNA, where mining, roads, and grazing are prohibited and where the U.S. Forest Service has completed a number of conservation actions that have improved the habitat for Gentry indigo bush. Additionally, as noted above, the actions of the U.S. Forest Service and the protection that the canyon receives by virtue of its wilderness and RNA designations will continue to provide for the long-term conservation of Gentry indigo bush in Sycamore Canyon. The metapopulation in Sycamore Canyon has persisted through some dramatic environmental events, and its numbers have increased; thus, we believe it will continue to persist into the future. Other factors (*e.g.*, watershed degradation, invasive species, undocumented immigrant and U.S. Border Patrol activities, recreation, fire, climate change, and genetic factors associated with small population size) discussed above have not been documented as more than low magnitude or potential threats, and therefore it is not reasonably foreseeable that these factors pose threats over a significant portion of the species' range. We anticipate that we will have the opportunity to work cooperatively with the Tohono O'odham Nation, as we have in the past, to census their populations and address potential concerns, if necessary. We also plan to emphasize the need for and participation in future monitoring efforts, surveys, and genetic studies.

The Service does not believe the Gentry indigo bush is likely to become a threatened species throughout either all or a significant portion of its range in the foreseeable future. The only population for which we have a thorough threats assessment is the one on U.S. Forest Service land in Sycamore Canyon. While the Sycamore Canyon population is not entirely devoid of potential threats, we believe that U.S. Forest Service management (*e.g.*, RNA and Wilderness designations, exclusion of both domestic and Mexican cattle from the habitat) sufficiently ameliorates human-influenced threats, while its persistence over time through droughts and floods, and its discovery outside the floodplain, render it unlikely to be extirpated from the canyon as a result of natural factors.

Threats facing the other populations are less well known. Three populations are known from Mexico. One population in Mexico has been present since its original discovery in 1995, another one was relocated in 2005 after it was initially detected in 2004, and the remaining population was only detected in 2005. Based on this information, two of the populations are known to have persisted. In addition, according to information received during the public comment period, the Mexico populations are in areas not accessible to cattle. We can verify that plants still exist on the Tohono O'odham Nation. The fact that the Mexican and Tohono O'odham Nation populations have persisted under current management and through various climatic conditions provides evidence that whatever threats may exist, if any, are not significant. In summary, we have no evidence to indicate that any portion, let alone a significant portion, of the species' range is threatened to the extent that listing under the Act is warranted.

We will continue to monitor the status of this species and will accept additional information and comments at any time from all concerned governmental agencies, the scientific community, industry, and any other interested party concerning this finding. This information will help us monitor and encourage beneficial measures for this species.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor at the Arizona Ecological Services Office (see **ADDRESSES** section).

Author

The primary author of this document is the Arizona Ecological Services Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 14, 2005.

Marshall Jones,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 05–18881 Filed 9–26–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT74

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Astragalus lentiginosus* var. *coachellae* (Coachella Valley milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* (Coachella Valley milk-vetch), and the availability of a draft economic analysis of the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted on this proposed rule need not be resubmitted as they have already been incorporated into the

public record and will be fully considered in our final determination.

DATES: We will accept public comments and information until October 27, 2005.

ADDRESSES: Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011;

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office at the above address, or fax your comments to 760/431–9624; or

3. You may send your comments by electronic mail (e-mail) to *fw1cfwocvmv@fws.gov.* For directions on how to submit electronic comments, see the ''Public Comments Solicited'' section. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We intend that any final action resulting from our critical habitat proposal be as accurate and effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested party concerning the proposed rule and the associated draft economic analysis. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), including whether the benefits of designation would outweigh any threats to the species resulting from designation;

(2) Specific information on the distribution of *Astragalus lentiginosus* var. *coachellae,* the amount and distribution of the species' habitat, and which habitat is essential to the conservation of the species, and why;

(3) Land-use designations and current or planned activities in the subject area and their possible impacts on the species or proposed critical habitat;

(4) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(5) Any foreseeable economic, environmental, or other impacts resulting from the proposed designation of critical habitat or coextensively from the listing, and in particular, any impacts on small entities or families;

(6) Whether the economic analysis identifies all State and local costs. If not, what other costs should be included;

(7) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the listing of the species or the designation of critical habitat;

(8) Whether the economic analysis correctly assesses the effect on regional costs associated with land- and water-use controls that derive from the designation;

(9) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from any final designation;

(10) Whether the economic analysis appropriately identifies all costs that could result from the designation or coextensively from the listing; and

(11) Whether there is information about areas that could be used as substitutes for the economic activities planned in critical habitat areas that would offset the costs and allow for the conservation of critical habitat areas.

All previous comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (see **ADDRESSES** section). Our final determination concerning designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* will take into consideration all comments and any additional information received during both comment periods. On the basis of public comment on the critical habitat proposal, the draft economic analysis, and the final economic analysis, we may during the development of our final determination find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

Please submit electronic comments in an ASCII file and avoid the use of any special characters or any form of encryption. Also, please include ''Attn: Coachella Valley milk-vetch'' and your name and return address in your e-mail message regarding the *Astragalus lentiginosus* var. *coachellae* proposed rule or the draft economic analysis. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described above in the **ADDRESSES** section.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold 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 comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office at the address listed under **ADDRESSES.** Copies of the proposed critical habitat rule for *Astragalus lentiginosus* var. *coachellae* and the draft economic analysis are also available on the Internet at *http://www.fws.gov/pacific/carlsbad/CVMV.htm.* In the event that our Internet connection is not functional, please obtain copies of documents directly from the Carlsbad Fish and Wildlife Office.

Background

On December 14, 2004, we published a proposed rule in the **Federal Register** (69 FR 74468) to designate critical habitat for *Astragalus lentiginosus* var. *coachellae* pursuant to the Act. We identified approximately 20,559 acres (ac) (8,320 hectares (ha)) of essential habitat for this species. Of the essential habitat, we proposed to designate approximately 3,583 ac (1,450 ha) of critical habitat in three units in Riverside and San Bernardino Counties, California. Approximately 16,976 ac (6,870 ha) of essential habitat covered under the pending Coachella Valley Multiple Species Habitat Conservation

Plan in Riverside County was excluded from proposed critical habitat under section 4(b)(2) of the Act. The first comment period for the *A. l.* var. *coachellae* proposed critical habitat rule closed on February 14, 2005. For more information on this species, refer to the final rule listing this species as endangered, published in the **Federal Register** on October 6, 1998 (63 FR 53596).

The proposed critical habitat for *Astragalus lentiginosus* var. *coachellae,* published on December 14, 2004 (69 FR 74475), was intended to include only Federal and State lands. Although the descriptions of the proposed critical habitat units describe those units as Federal or State lands, due to using a 100 meter Universal Transverse Mercator grid in our mapping process, some acres associated with private lands were inadvertently included in the total acreage figures. Because the draft economic analysis looks at the costs associated with all of the acreage included in the proposed rule, the development costs on private lands were included. If this proposed critical habitat designation is made final, the Service intends to explicitly remove the private lands in the final determination.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration the economic impact, impact to national security, and any other relevant impacts of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the December 14, 2004 (69 FR 74468), proposed designation of critical habitat for *Astragalus lentiginosus* var. *coachellae.*

The draft economic analysis considers the potential economic effects of actions relating to the conservation of *Astragalus lentiginosus* var. *coachellae,* including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *A. l.* var. *coachellae* in essential habitat areas. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (*e.g.*, lost economic opportunities associated with restrictions on land use). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date the species was listed as an endangered species and considers those costs that may occur in the 20 years following the designation of critical habitat.

Pre-designation costs include those *Astragalus lentiginosus* var. *coachellae*-related conservation activities associated with sections 4, 7, and 10 of the Act that have accrued since the time that *A. l.* var. *coachellae* was listed as endangered (October 6, 1998), but prior to the final designation of critical habitat. The pre-designation costs in the proposed critical habitat are estimated at $2.5 million.

Post-designation effects include likely future costs associated with *Astragalus lentiginosus* var. *coachellae* conservation efforts following the final designation of critical habitat in December 2005 (effectively 2006 through 2025). The total costs associated with the designation of critical habitat are expected to be $7.8 million in constant dollars, or $5.8 million and $4.2 million when using a three percent or seven percent discount rate, respectively, over the next 20 years (an annualized cost of $0.4 million at either rate). As mentioned above, private lands were not meant to be included in the proposed designation. The costs associated with development on private lands are $1.5 million in constant dollars, or $1.1 million and $0.8 million when using a three percent or seven percent discount rate, respectively, over the next 20 years (an annualized cost of $0.07 million at either rate). Therefore, the net costs associated with the designation of critical habitat are expected to be $6.2 million in constant dollars, or $4.7 million or $3.4 million when using a three percent or seven percent discount rate, respectively over the next 20 years (an annualized cost of $0.03 million at either rate).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues. However, because the draft economic analysis indicates the potential economic impact associated with a designation of all habitat with features essential to the conservation of this species would total no more than $0.4 million per year, we do not anticipate that this final rule will have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the time line for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations,

and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this proposed designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, residential, industrial, and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. Our analysis determined that costs involving conservation measures for *Astragalus lentiginosus* var. *coachellae* would be incurred for activities involving residential, commercial, and industrial development (land subdivision companies); transportation (California Department of Transportation (Cal Trans), Coachella Valley Association of Governments (CVAG), or Riverside County Transportation Commission (RCTC)); Federal land (Bureau of Land Management (BLM), U.S. Forest Service (USFS), and U.S. Fish and Wildlife Service (Service)); other public (California Department of Fish and Game (CDFG) and California Department of Parks and Recreation (CDPR)) or conservation (The Nature Conservancy (TNC) and Center for Natural Lands Management (CNLM)) land management, water supply (Mission Springs Water District (MSWD) and Coachella Valley Water District (CVWD)), and flood control (CVWD and Riverside County Flood Control and Water Conservation District (RCFC) agencies); implementation of the draft Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP); and wind energy projects (private businesses and individuals).

In our economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. Critical habitat designation is expected to result in additional costs to real estate development projects through a Local Development Mitigation Fee. This fee will be imposed by local jurisdictions on residential, commercial, and industrial development occurring on private land containing habitat for covered species (species included in the MSHCP permit) within the Coachella Valley MSHCP Plan Area. The affected land is located within Riverside County and under private ownership by individuals who will either undertake a development project on their own or sell the land to developers for development. However, as previously mentioned, due to using a 100 meter Universal Transverse Mercator grid in our mapping process, private lands were inadvertently included in the proposed critical habitat designation. If the proposed rule is made final, the Service intends to explicitly remove private lands, and therefore the additional costs to real estate development projects mentioned above will likely not materialize. For businesses involved with land development, the relevant threshold for ''small'' is annual revenues of $6 million or less. The North American Industry Classification System (NAICS) code 237210 is comprised of establishments primarily engaged in servicing land (*e.g.*, excavation, installing roads and utilities) and subdividing real property into lots for subsequent sale to builders. Land subdivision precedes actual construction, and typically includes residential but may also include industrial and commercial properties.

It is likely that development companies in Riverside County, the entities directly impacted by the regulation, would not bear the additional costs of *Astragalus lentiginosus* var. *coachellae* conservation within the essential habitat, but pass these costs to the landowners through a lower land purchase price. Of the 8,598 acres of developable land in Units 1 and 2, 8,559 acres are under private ownership and ''vacant''; the remaining 39 acres are under private ownership and in agriculture.

To comply with the SBA recommendation that Federal agencies consider impacts to entities that may be indirectly affected by the proposed regulation, this screening level analysis presents information on land subdivision and farming businesses for Riverside County as these are the businesses that would likely be impacted directly or indirectly by the regulation (see Table A–1 in the draft economic analysis). As highlighted in Table A–1, the majority of the land subdivision and farming businesses within Riverside County are considered small businesses.

It is important to note that the identity and number of land subdivision and farming businesses impacted by the critical habitat designation is not known. In addition, the identity and number of affected businesses classified as ''small'' is also not known. Nevertheless, the county-level information provided in Table A–1 reflects the smallest region for which data relevant to this analysis exist. This county-level information clearly over-represents the potential number of small businesses impacted by development-related *Astragalus lentiginosus var. coachellae* conservation efforts as the privately owned developable land within the essential habitat (approximately 8,598 acres) comprises less than two-tenths of one percent of the total land area in the County (4,612,480 acres), and only 265.2 acres of this private land is forecasted to be developed between 2006 and 2025. Furthermore, the 39 acres of agriculture land represent less than one-half of one percent of the developable land (approximately 8,598 acres) within the essential habitat.

While the identity and number of land subdivision and farming businesses impacted by the critical habitat designation is not known, considering that low density residential

development is expected to comprise 79 percent of the forecasted acres of land development between 2006 and 2025, this analysis relates the economic impacts to the median home price in the County. The mitigation cost per acre of development is $1,975 for this species, and the build-out density for residential low development is fewer than eight dwelling units per acre. Thus, *Astragalus lentiginosus* var. *coachellae*-related conservation efforts are expected to cost between $247 and $1,975 per residential dwelling unit (one to eight dwelling units per acre) developed. Considering the median sales price for single family residences in the County was $315,000 in 2004, the economic impacts are equal to 0.08 percent to 0.63 percent of the median home price in Riverside County. These costs may be borne by the developer or passed on to the landowner through a lower land purchase price.

Based on this data, we have determined that this proposed designation would not result in a significant economic impact on a substantial number of small entities, in particular to land developers or farmers in Riverside County since no private lands are actually being proposed for critical habitat as stated earlier in the Background section. We may also exclude areas from the final designation if it is determined that these localized areas have an impact to a substantial number of businesses and a significant proportion of their annual revenues. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix A of our draft economic analysis of this proposed designation for a more detailed discussion of potential economic impacts to small business entities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues. On the basis of our draft economic analysis, the proposed critical habitat designation is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required. Please refer to Appendix A of our draft economic analysis of the proposed designation for a more detailed discussion of potential effects on energy supply.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. As discussed in the draft economic analysis, nine small local governments are located adjacent to or bisect the areas subject to this analysis: Palm Springs (population 42,807); Cathedral City (population 42,647); Banning (population 23,562); Yucca Valley (population 16,865); Desert Hot Springs (population 16,582); Cherry Valley (population 5,891); Thousand Palms (population 5,120); Cabazon (population 2,229); and Morongo Valley (population 1,929). All nine of the local governments have populations that fall within the criteria (fewer than 50,000 residents) for ''small entity.'' However, there is no record of consultations between the Service and these cities since *Astragalus lentiginosus* var. *coachellae* was listed in 1998. Indeed, it is not likely that these cities would be involved in a land development project involving a section 7 consultation, although a city may be involved in land use planning or permitting, and may play a role as an interested party in infrastructure projects. Any cost associated with this activity/involvement is anticipated to be a very small portion of the city's budget. Consequently, we do not believe that critical habitat designation would significantly or uniquely affect small government entities. As such, Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for *Astragalus lentiginosus* var. *coachellae*. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go

forward. In conclusion, the designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* does not pose significant takings implications.

Author

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 16, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–19098 Filed 9–26–05; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 70, No. 186

Tuesday, September 27, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 21, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Clementines from Spain.

OMB Control Number: 0579–0203.

Summary of Collection: As authorized by the Plant Protection Act (7 U.S.C. 7701–7772) (PPA), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS), which administers regulation to implement the PPA. The regulations in ''Subpart—Fruits and Vegetables,'' 7 CFR 319.56 through 319.56–8, prohibits or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pest, including fruit flies. Under the regulations, clementines from Spain are subject to certain conditions before entering the United States to ensure that exotic plant pest, such as the Mediterranean fruit fly, are not introduced into the United States.

Need and Use of the Information: APHIS will collect information to ensure that the cold treatment was successfully completed and also to ensure that no Mediterranean fruit fly are found in any of the shipment of clementines from Spain. Failure to collect this information would cripple APHIS' ability to ensure that clementines from Spain are not carrying fruit flies.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 4,508.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,645,156.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–19218 Filed 9–26–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 21, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Rural Business Service

Title: 7 CFR 4279–B, Guaranteed Loan Making—Business and Industry Loans.

OMB Control Number: 0570–0017.

Summary of Collection: The Business and Industry (B&I) program was legislated in 1972 under Section 310B of the Consolidated Farm and Rural Development Act, as amended. The purpose of the program is to improve, develop, or finance businesses, industries, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved through bolstering the existing private credit structure through the guaranteeing of quality loans made by lending institutions, thereby providing lasting community benefits. The B&I program is administered by the Rural Business Service (RBS) through Rural Development State and sub-State offices serving each State.

Need and Use of the Information: RBS will collect information to determine a lender and borrower eligibility and creditworthiness. The information is used by RBS loan officers and approval officials to determine program eligibility and for program monitoring.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 8,544.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 19,761.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–19219 Filed 9–26–05; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

National Agricultural Library; Notice of Intent To Seek Approval To Collect Information

AGENCY: National Agricultural Library, Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, this notice announces the National Agricultural Library's intent to request an extension of currently approved information collection form related to the Animal Welfare Information Center's (AWIC) workshop, Meeting the Information Requirements of the Animal Welfare Act. This workshop registration form requests the following information from participants: contact information, affiliation, and database searching experience. Participants include principal investigators, members of Institutional Animal Care and Use committees, animal care technicians, facility managers, veterinarians, and administrators of animal use programs.

DATES: Comments on this notice must be received by December 1, 2005 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Sandra Ball, Program Support Assistant, USDA, ARS, NAL Animal Welfare Information Center, 10301 Baltimore Avenue, Room #410, Beltsville, MD 20705–2351. Submit electronic comments to: *sball@nal.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Sandra Ball, Program Support Assistant. Phone: 301–504–6212 or Fax: 301 504 7125.

SUPPLEMENTARY INFORMATION:

Title: Workshop Registration, Meeting the Information Requirements of the Animal Welfare Act.

OMB Number: 0518–033.

Expiration Date: 02/28/2006.

Type of Request: To extend currently approved data collection form.

Abstract: This Web-based form collects information to register respondents in the workshop, Meeting the Information Requirements of the Animal Welfare Act. Information collected includes the following: preference of workshop date, signature, name, title, organization name, mailing address, phone and fax numbers, and email address. Five questions are asked regarding: database searching experience, membership on an Institutional Animal Care and Use Committee, and goals for attending the workshop.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Principal investigators, members of Institutional Animal Care and Use Committees, animal care personnel, veterinarians, information providers, and administrators of animal use programs.

Estimated number of Respondents: 100 per year.

Estimated Total Annual Burden on Respondents: 8.33 hours.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: September 8, 2005.

Edward B. Knipling,

Administrator, ARS.

[FR Doc. 05–19197 Filed 9–26–05; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–112–1]

Monsanto Company; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Corn Genetically Engineered To Express High Lysine Levels

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Monsanto Company, seeking a determination of nonregulated status for corn designated as transformation event LY038, which has been genetically engineered to express a lysine-insensitive dihydrodipicolinate synthase (cDHDPS) enzyme, which allows for the accumulation of higher levels of lysine in the germ of the seed. Corn-soybean meal based diets formulated for poultry and swine are characteristically deficient in lysine and require the addition of supplemental lysine for optimal animal growth and production. This corn product may provide an alternative to supplementation of feed with lysine. The petition has been submitted in accordance with our regulations

concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn presents a plant pest risk. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments we receive on or before November 28, 2005.

ADDRESSES: You may submit comments by either of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–112–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–112–1.

Reading Room: You may read the petition, the environmental assessment, and any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Levis Handley, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5721. To obtain copies of the petition or the environmental assessment (EA), contact Ms. Ingrid Berlanger at (301) 734–4885; e-mail: *ingrid.e.berlanger@aphis.usda.gov.* The petition and the EA are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/04_22901p.pdf* and *http://www.aphis.usda.gov/brs/aphisdocs/04_22901p.ea.pdf.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On August 16, 2004, APHIS received a petition (APHIS Petition Number 04–229–01p) from Monsanto Company (Monsanto) of St. Louis, MO, on behalf of Renessen LLC of Deerfield, IL, requesting a determination of nonregulated status under 7 CFR part 340 for corn (*Zea mays* L.) designated as transformation event LY038 which has been genetically engineered to produce higher levels of lysine in the seed than is typically found in corn. The Monsanto petition states that the subject corn should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, the LY038 corn has been genetically modified to express the *cordap*A gene from *Cornybacterium glutamicum*. This gene encodes for lysine-insensitive dihydrodipicolinate synthase (cDHDPS) enzyme. The expression of *cordap*A is under the control of the maize Glb1 promoter, which directs cDHDPS expression predominately in the germ of the seed, resulting in accumulation of lysine in the grain. Corn-soybean meal based diets formulated for poultry and swine are characteristically deficient in lysine and require the addition of supplemental lysine for optimal animal growth and production. Development of LY038 corn may provide an alternative to direct addition of supplemental lysine to poultry and swine diets.

Event LY038 has been considered a regulated article under the regulations in 7 CFR part 340 because it was originally engineered with regulatory sequences derived from plant pathogens. This corn event has been field tested since 2000 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical confinement or isolation, would not present a risk of plant pest introduction or dissemination.

In section 403 of the Plant Protection Act (7 U.S.C. 7702), plant pest is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The Food and Drug Administration (FDA) published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the Federal Food, Drug, and Cosmetic Act and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Monsanto is consulting with FDA on the subject corn event.

To provide the public with documentation of APHIS' review and analysis of the environmental impacts and plant pest risk associated with a proposed determination of nonregulated status for Monsanto's event LY038 corn, an environmental assessment (EA) has been prepared. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested persons on the environmental assessment prepared to examine any

environmental impacts of the proposed determination for the subject corn event. The petition and the environmental assessment and any comments received are available for public review, and copies of the petitions and the environmental assessment are available as indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. After reviewing and evaluating the comments on the petition and the environmental assessment and other data and information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Monsanto's high lysine corn event LY038 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 1622n and 7701–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 21st day of September 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–5178 Filed 9–26–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet October 21, 2005, (RAC) in Willits, California. Agenda items to be covered included: (1) Approval of minutes, (2) Public Comment, (3) Sub-committees (4) Discussion—items of interest (5) Next agenda and meeting date.

DATES: The meeting will be held on October 21, 2005, from 9 a.m. until 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St. Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo CA 95428. (707) 983–8503; e-mail *rhurt@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by October 13, 2005. Public comment will have the opportunity to address the committee at the meeting.

Dated: September 21, 2005.

Blaine Baker,

Designated Federal Official.

[FR Doc. 05–19240 Filed 9–26–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–601, A–583–603]

Top–of-the–Stove Stainless Steel Cooking Ware from the Republic of Korea and Taiwan; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 1, 2005, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on top–of-the–stove stainless steel cooking ware (''cooking ware'') from the Republic of Korea (''Korea'') and Taiwan pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). The Department conducted expedited (120–day) sunset reviews of these orders. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Reviews* section of this notice.

EFFECTIVE DATE: September 27, 2005.

FOR FURTHER INFORMATION CONTACT: Zev Primor, AD/CVD Operations, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2005, the Department published the notice of initiation of the second sunset reviews of the antidumping duty orders on cooking ware from Korea and Taiwan pursuant to section 751(c) of the Act. *See Initiation of Five–Year (''Sunset'') Reviews*, 70 FR 9919 (March 1, 2005). The Department received the Notice of Intent to Participate from Regal Ware, Inc.; Vita Craft Corporation; and Paper Allied Industrial Chemical & Energy Workers (Local 7–0850) (collectively ''the domestic interested parties''), within the deadline specified in 19 CFR 351.218(d)(1)(i) (''Sunset Regulations''). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as manufacturers of a domestic–like product in the United States, and unions whose workers are engaged in the production of a domestic–like product in the United States.

We received complete substantive responses from the domestic interested parties within the 30–day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from respondent interested parties with respect to any of the orders covered by these sunset reviews. As a result, pursuant to section 751(c)(4)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120–day) sunset reviews of these orders for Korea and Taiwan.

Scope of the Orders

The merchandise subject to these antidumping orders is cooking ware from Korea and Taiwan. The subject merchandise is all non–electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of the orders are stainless steel oven ware and stainless steel kitchen ware. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 7323.93.00 and 9604.00.00. The HTSUS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

The Department has issued several scope clarifications for these orders. The Department found that ''universal pan lids'' are not within the scope of the orders (57 FR 57420 (December 4, 1992)) and Max Burton's StoveTop Smoker is within the scope of the orders (60 FR 36782 (July 18, 1995)). Certain stainless steel pasta and steamer inserts (63 FR 41545 (August 4, 1998)), certain stainless steel eight–cup coffee percolators (58 FR 11209, February 24, 1993), and certain stainless steel stock pots and covers are within the scope of

the orders (57 FR 57420 (December 4, 1992)). Moreover, as a result of a changed circumstances review, the Department revoked the orders in part with respect to certain stainless steel camping ware: (1) made of single–ply stainless steel having a thickness no greater than 6.0 millimeters; and (2) consisting of 1.0, 1.5, and 2.0 quart saucepans without handles and with lids that also serve as fry pans (62 FR 3662 (January 24, 1997)).

Analysis of Comments Received

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Top–of-the–Stove Stainless Steel Cooking Ware from the Republic of Korea and Taiwan (''Decision Memorandum'') from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated September 27, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were to be revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on cooking ware from Korea and Taiwan would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (percent)
Korea.	
Bum Koo Industrial Co., Ltd.	*31.23
Dae Sung Industrial Co., Ltd.	6.11
Hai Dong Stainless Industries, Co.	12.14
Kyung Dong Industrial Co., Ltd.	8.36
Namil Metal Co. Ltd.	0.75
All Others	8.10
Taiwan.	
Golden Lion Metal Industry Co., Ltd.	15.08
Lyi Mean Industrial Co., Ltd.	26.10
Song Far Industry Co., Ltd.	25.90
All Others	22.61

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: September 20, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–19275 Filed 9–26–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability (NOA) for the Record of Decision (ROD) for Activities Associated With Future Programs at the U.S. Army Dugway Proving Ground (DPG), Utah

AGENCY: Department of the Army, DOD.

ACTION: Record of decision.

SUMMARY: The Department of the Army announces the availability of its Record of Decision (ROD) for Activities Associated with Future Programs at the U.S. Army DPG. The ROD describes the Army's decisions with respect to the Proposed Action (implementation of DPG's planned mission for a 7-year time frame) and alternatives considered in the Environmental Impact Statement (EIS) and its rationale for the decision. Based on the EIS and other relevant factors, the Army has decided to implement its Proposed Action. The Proposed Action is the alternative that best fulfills DPG's statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors. DPG will continue to implement its existing mitigation measures as well as measures described in the ROD to mitigate potential environmental and socioeconomic impacts caused by the Proposed Action.

ADDRESSES: Requests for copies of the ROD may be submitted to: U.S. Army Dugway Proving Ground, ATTN: CSTE–DTC–DP–PA (Paula Nicholson), Dugway, UT 84022–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Paula Nicholson at (435) 831–3409 or by e-mail at *nicholsn@dpg.army.mil.*

SUPPLEMENTARY INFORMATION: The EIS was prepared to address the planned mission at DPG, the reasonable alternatives to the planned mission, and potential environmental impacts of DPG's future operations.

DPG is one of the few Army installations large and remote enough to permit comprehensive and realistic testing of biological and chemical defense systems, munitions and smokes, obscurants, and illuminants with a commitment to environmental protection and personal and public safety. Both DoD and non-DOD customers are posing challenges for DPG to support greater numbers of test and training events related to new enemy threats, next generation materiel, advanced conventional weapon systems, environmental concern, and demilitarization technologies.

The Proposed Action described and evaluated in the EIS is the implementation of DPG's planned mission. It includes continuation of existing DPG activities (including, but not limited to, chemical and biological defense testing, other testing programs, training, real property management, and environmental management) with future increases in most testing and training operating areas. Additionally, the Proposed Action includes diversification of DPG's operations and implementation of a Summary Development Plan identifying real property planning recommendations for DPG. The Proposed Action will enable DPG to effectively respond to the challenges of a growing and diversified mission.

In making its decision, the Army considered the results of the analysis in the EIS, including the evaluation of the other alternatives. The EIS considered the following two alternatives to the Proposed Action and the No Action Alternative: (1) Decreased mission with a major reduction in operations at DPG and (2) a maximum expanded mission with major increases in most operating areas compared to current operations. The No Action Alternative represents the status quo and assumes that existing DPG operations would continue at

approximately their current rates into the foreseeable future. All comments provided during the formal public review and comment periods were also considered, as well as national security and mission requirements.

The consideration of future programs ensures that the general type and intensity of most of DPG's future activities were addressed. A range of factors such as future technology developments, available budgets, and changing defense threats often alter test plans. The Proposed Action within the Future Programs EIS includes only those activities that are reasonably foreseeable and for which DPG is the proponent or can make a decision about the activity. Specific program designations and equipment/materials to be tested may change between the time that the EIS was prepared and the actual test date. Accordingly, the EIS identifies the general characteristics of reasonably foreseeable test programs, rather than providing definitive and specific test information.

DPG will continue to implement its existing mitigation measures, as well as measures described in the ROD, to mitigate potential environmental and socioeconomic impacts caused by the Proposed Action. DPG and the Army are committed to protecting human health, sustaining their environments, and maintaining regulatory compliance.

Copies of the ROD and the Final EIS are available for review purposes only (no extra copies of the documents will be available at these locations) at the following libraries: Whitmore Library, 2197 East 7000 South (Ft. Union Blvd.), Salt Lake City; University of Utah, J. Willard Marriott Library, 15th East and South Campus Drive, Salt Lake City; Dugway Public Library, 5124 Kister Avenue, Dugway; Tooele City Public Library, 128 W. Vine Street, Tooele.

Dated: September 22, 2005.

Daphne Kamely,

Acting Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 05–19246 Filed 9–26–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Transfer of Jurisdiction of a Portion of Joliet Army Ammunition Plant to the Department of Agriculture for the Midewin National Tallgrass Prairie

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: On 02 September 2005, in accordance with PL 104–106, Title XXIX, Subtitle A, entitled ''Illinois Land Conservation Act of 1995'', the Department of the Army signed a Secretariat Memorandum to transfer approximately 2,640 Acres of land at Joliet Army Ammunition Plant, Illinois to the Department of Agriculture for use by the Forest Service as the Midewin National Tallgrass Prairie. The purpose of this notice is to effect that transfer pursuant to the provisions of Section 2912(e)(2) of PL 104–106.

This is a partial transfer of the entire acreage contemplated by the statute. Additional transfers will be made in the future. A map entitled ''2004 USDA Assignment Parcel Locator Map'' and legal descriptions of the MFG area revised 18 January 2005 and of the LAP area revised 11 August 2005 of the property which is the subject of the partial transfer are on file with the U.S. Army Engineer District, Corps of Engineers, Louisville, Kentucky and the Office of the Regional Forester, USDA, Forest Service.

FOR FURTHER INFORMATION CONTACT: Mr. Albert J. Edwardo, 502–315–6969.

ADDRESSES: Documents are on file at locations:

1. U.S. Army Engineer District, Louisville, Corps of Engineers, P.O. Box 59, Louisville, Kentucky 40201–0059.
2. Office of the Regional Forester, USDA, Forest Service, 626 East Wisconsin Avenue, Suite 800, Milwaukee, Wisconsin 53203.

SUPPLEMENTARY INFORMATION: None.

Michael G. Barter,

Chief, Real Estate Division.

[FR Doc. 05–19217 Filed 9–26–05; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

Name of Committee: Inland Waterways Users Board (Board).

Date: October 13, 2005.

Location: Heathman Lodge, 7801 NE Greenwood Drive, Vancouver, Washington 98662, (1–360–254–3100).

Time: Registration will begin at 8:30 a.m. and the meeting is scheduled to adjourn at 12 p.m.

Agenda: The Board will hear briefings on the status of both the funding for inland navigation projects and studies, and the Inland Waterways Trust Fund. The Board will also consider its priorities for the next fiscal year.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CEMP–POD, 441 G Street, NW., Washington, DC 20314–1000; Ph: 202–761–1934.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any interested person may attend, appear before, or file statement with the committee at the time and in the manner permitted by the committee.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–19270 Filed 9–26–05; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 27, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its

statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 22, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Reinstatement.

Title: The Leveraging Educational Assistance Program (LEAP) and Special Leveraging Educational Assistance Program (SLEAP) Programs.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 560.

Abstract: The LEAP and SLEAP programs use matching Federal and State Funds to provide a nationwide system of grants to assist postsecondary educational students with substantial financial need. On this performance report the states provide information the Department requires about the state's use of program funds in order to demonstrate compliance with the program's statutory and regulatory requirements. Federal program officials use the performance report data for monitoring program funds distribution. With the clearance of this collection, the Department is seeking to automate the performance reporting process for both the LEAP Program and the subprogram, SLEAP. There are no significant changes to the current LEAP form data elements, there are however, additional items pertaining to the SLEAP program.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2737. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–19243 Filed 9–26–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, October 12, 2005, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831.

Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Bethel Valley Groundwater Study

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m., Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on September 20, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–19278 Filed 9–26–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, October 20, 2005 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513, (859) 219–4001.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental

restoration, waste management and related activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6 p.m.—Call to Order
—Introductions
—Review of Agenda
—Approval of September Minutes
6:15 p.m.—Deputy Designated Federal Officer's Comments
6:35 p.m.—Federal Coordinator's Comments
6:40 p.m.—Ex-officios' Comments
6:50 p.m.—Public Comments and Questions
7 p.m.—Task Forces/Presentations
- Waste Disposition Task Force
- Water Quality Task Force—C–746 S&T Site Evaluation Report
- Long Range Strategy/Stewardship Task Force
- Community Outreach Task Force

8 p.m.—Public Comments and Questions
8:10 p.m.—Break
8:20 p.m.—Administrative Issues
- Budget Review
- Review of Workplan
- Review of Next Agenda

8:30 p.m.—Review of Action Items
8:35 p.m.—Subcommittee Reports
- Executive Committee

—Chairs Meeting Overview
8:50 p.m.—Final Comments
9 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m., on Monday thru Friday or by writing to David Dollins, Department of Energy, Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC on September 20, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–19279 Filed 9–26–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7974–8]

Acid Rain Program: Notice of Annual Adjustment Factors for Excess Emission Penalty

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of annual adjustment factors for excess emissions penalty.

SUMMARY: Under the Acid Rain Program, affected units must hold enough allowances to cover their sulfur dioxide emissions and meet an emission limit for nitrogen oxides. Under 40 CFR 77.6, units that do not meet these requirements must pay a penalty without demand to the Administrator based on the number of excess tons emitted times $2000 as adjusted by an annual adjustment factor that must be published in the **Federal Register**.

The annual adjustment factor for adjusting the penalty for excess emissions of sulfur dioxide and nitrogen oxides under 40 CFR part 77 for compliance year 2005 is 1.5209. This value is derived using the Consumer Price Index (''CPI'') for 1990 and 2005 (as defined at 40 CFR part 72, the 2005 CPI is based on the August 2004 CPI for all urban consumers), and corresponds to a penalty of $3042 per excess ton of sulfur dioxide or nitrogen oxides emitted.

The annual adjustment factor for adjusting the penalty for excess emissions of sulfur dioxide and nitrogen oxides under 40 CFR part 77 for compliance year 2006 is 1.5762. This value is derived using the Consumer Price Index (''CPI'') for 1990 and 2006 (as defined at 40 CFR part 72, the 2006 CPI is based on the August 2005 CPI for all urban consumers), and corresponds to a penalty of $3152 per excess ton of sulfur dioxide or nitrogen oxides emitted.

FOR FURTHER INFORMATION CONTACT: Robert Miller, Clean Air Markets Division (6204J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 at (202) 343–9077.

Dated: September 20, 2005.

Sam Napolitano,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 05–19258 Filed 9–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7974–6; E-Docket No. ORD–2005–0026]

Draft All-Ages Lead Model

AGENCY: Environmental Protection Agency.

ACTION: Notice of external review draft for public review and comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Office of Research and Development's National Center for Environmental Assessment (NCEA) is announcing the availability of an external review draft of the newly developed All-Ages Lead Model (AALM) Version 1.05, for public review and comment. EPA is releasing this draft model solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This model has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

DATES: The period for submission of comments on the external review draft of the AALM begins September 27, 2005, and ends October 27, 2005.

ADDRESSES: The external review draft of the AALM will be available on or about September 27, 2005. Internet users will be able to access this model and the accompanying user's guide on the NCEA home page under Recent Additions; the URL is *http://www.epa.gov/ncea/*. The EPA numbers are: EPA/600/C–05/013 for the model and EPA/600/R–05/102 for the user's guide. A limited number of CD–ROM copies will be available. For information on copies of the draft documents, contact Ms. Diane Ray by phone (919–541–3637), facsimile (919–541–1818), or e-mail (*ray.diane@epa.gov*) to request a CD–ROM copy. Please provide the draft's title, All-Ages Lead Model (AALM) Version 1.05, the EPA numbers, EPA/600/C–05/013 and EPA/600/R–05/102, and your name and address to facilitate processing of your request. Public comments on the external review

draft of the AALM may be submitted electronically, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the section of this notice entitled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For details on the period for submission of comments from the public, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For technical information, contact Robert Elias, Ph.D., NCEA, facsimile: 919–541–1818, or e-mail: *elias.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: The AALM represents EPA's latest efforts to develop tools to model human lead exposure, and it builds on EPA's prior experience in lead modeling. EPA's Uptake Biokinetic (UBK) Model for Lead underwent peer review by the Science Advisory Board's (SAB) Indoor Air Quality and Total Human Exposure Committee in November 1991 (56 FR 55127, October 24, 1991). Subsequently, the Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children Version 0.99d was released in March 1994 (U.S. EPA, Office of Solid Waste and Emergency Response; available from NTIS, PB94–501517). The purpose of the IEUBK model is to provide risk assessors and risk managers with a tool for rapidly evaluating the impact of possible sources of lead in a specific human setting where there is a concern for human exposure to lead. The IEUBK model has been widely accepted in the risk assessment community as a tool for implementing the site specific risk assessment process when the issue is childhood lead exposure. Version 1.0 of IEUBK is currently available at the following URL, *http://www.epa.gov/superfund/programs/lead/ieubk.htm.*

Recognizing the need to expand the IEUBK model to include older childhood and adult lead exposure and to add several features not available with the model, EPA initiated work on the AALM in 1998, when the exposure module was expanded to a full age range (0–90 years) and revised to incorporate several new model features and user options. In 1999, additional AALM development was accomplished with the expansion of the uptake and biokinetic modules. Since then, further refinement and preliminary testing of the AALM software has been carried out. The goal is to reduce uncertainty in lead exposure assessments for adults and children.

After the end of the comment period on the external review draft of the All-Ages Lead Model (AALM) Version 1.05, EPA will present the draft at a public meeting, tentatively scheduled for October 27 and 28, 2005, for review by EPA's Science Advisory Board (SAB) Ad Hoc All-Ages Lead Model (AALM) Review Panel. Public comments received during the external review comment period will be provided to the SAB review panel. There will be a subsequent **Federal Register** notice informing the public of the exact date and time of that SAB review panel meeting.

How To Submit Comments to EPA's E-Docket

EPA has established an official public docket for information pertaining to the external review draft of the AALM, Docket ID No. ORD–2005–0026. The official public docket is the collection of materials, excluding Confidential Business Information (CBI) or other information whose disclosure is restricted by statute that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

An electronic version of the official public docket is available through EPA's electronic public docket and comment system, E-Docket. You may use E-Docket at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing of the contents of the official public docket, and to view those documents in the public docket that are available electronically. Once in the system, select search, then key in the appropriate docket identification number.

Certain types of information will not be placed in E-Docket. Information claimed as CBI and other information with disclosure restricted by statute, also not included in the official public docket, will not be available for public viewing in E-Docket. Copyrighted material also will not be placed in E-Docket but will be referenced there and available as printed material in the official public docket.

Persons submitting public comments should note that EPA's policy makes the information available as received and at no charge for public viewing at the EPA Docket Center or in E-Docket. This policy applies to information submitted electronically or in paper form, except where restricted by copyright, CBI, or statute.

Unless restricted as above, public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to E-Docket. Physical objects will be photographed, where practical, and the photograph will be placed in E-Docket along with a brief description written by the docket staff.

You may submit public comments electronically, by mail, by facsimile, or by hand delivery/courier. To ensure proper receipt by EPA, include the appropriate docket identification number with your submission. Please adhere to the specified submitting period. Public comments received or submitted past the closing date will be marked ''late'' and may only be considered if time permits.

If you submit public comments electronically, EPA recommends that you include your name, mailing address, and an e-mail address or other details for contacting you. Also include these contact details on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the person submitting the public comments and allows EPA to contact you in case the Agency cannot read what you submit due to technical difficulties or needs to clarify issues raised by what you submit. If EPA cannot read what you submit due to technical difficulties and cannot contact you for clarification, it may delay or prohibit the Agency's consideration of the public comments.

To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and key in Docket ID No. ORD–2005–0026. The system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact details unless you provide it in the body of your comment.

Public comments may be sent by electronic mail (e-mail) to *ORD.Docket@epa.gov*, Attention Docket ID No. ORD–2005–0026. In contrast to EPA's electronic public docket, EPA's e-mail system is *not* an ''anonymous access'' system. If you send an e-mail directly to the docket without going through EPA's E-Docket, EPA's e-mail system automatically captures your email address, and it becomes part of the information in the official public

docket and is made available in EPA's E-Docket.

You may submit public comments on a disk or CD ROM mailed to the OEI Docket mailing address. Files will be accepted in WordPerfect, Word, or PDF file format. Avoid the use of special characters and any form of encryption.

If you provide public comments in writing, please submit one unbound original, with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively with the main text, and submit an unbound original and three copies.

Dated: September 21, 2005.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 05–19253 Filed 9–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7975–5]

Proposed CERCLA Administrative Cost Recovery Settlement; Town of Tilton and Tilton/Northfield Fire Department, Old Pillsbury Mill Superfund Site, Tilton, NH

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past costs concerning the Old Pillsbury Mill Superfund Site in Tilton, New Hampshire with the following settling parties: Town of Tilton and the Tilton/Northfield Fire Department. The settlement requires the settling parties to pay $378,706.00 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02214–2023 (Telephone No. 617–918–1440).

DATES: Comments must be submitted on or before October 27, 2005.

ADDRESSES: Comments should be addressed to Audrey Zucker, Enforcement Counsel, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100 (SES), Boston, Massachusetts 02114–2023 (Telephone No. 617–918–1778) and should refer to: In re: Old Pillsbury Mill Superfund Site, U.S. EPA Docket No. 01–2005–0016.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from Audrey Zucker, U.S. Environmental Protection Agency, Region I, Office of Environmental Stewardship, One Congress Street, Suite 1100 (SES), Boston, MA 02114–2023 (Telephone No. 617–918–1778; E-mail *zucker.audrey@epa.gov).*

Dated: September 12, 2005.

Susan Studlien,

Director, Office of Site Remediation & Restoration, Region 1.

[FR Doc. 05–19262 Filed 9–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0109 FRL–7716–9]

Endocrine Disruptor Screening Program; Chemical Selection Approach for Initial Round of Screening

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice describes the approach EPA plans to use for selecting the first group of chemicals to be screened in the Agency's Endocrine Disruptor Screening Program (EDSP). The Food Quality Protection Act of 1996 (FQPA) amended the Federal Food, Drug, and Cosmetic Act (FFDCA) to direct EPA to develop a chemical screening program using appropriate validated test systems and other scientifically relevant information to determine whether certain substances may have hormonal effects. In December 2002, EPA sought comment on its approach for selecting the initial list of chemicals for which testing will be required under the EDSP. Following review and revision based on the public comments, EPA is now describing the approach that it intends to use for selecting the chemicals for the initial list. For this initial approach, as recommended by scientific advisory committees, EPA will select 50 to 100 chemicals. The chemicals will be selected based on their relatively high potential for human exposure rather than using a combination of exposure- and effects-related factors. The scope of this first group of chemicals to be tested includes pesticide active ingredients and High Production Volume (HPV) chemicals used as pesticide inerts. This will allow EPA to focus its initial screening efforts on a smaller and more manageable universe of chemicals that emphasizes the early attention to the pesticide chemicals that Congress specifically mandated EPA to test for possible endocrine effects. This notice does not identify the initial list of chemicals, nor does it describe other aspects of the EDSP such as the administrative procedures EPA will use to require testing, the validated tests and battery that will be included in the EDSP, or the timeframe for requiring the testing or receiving the data. The initial chemical list and the details of the EDSP process that will apply to the initial chemical list will be addressed in subsequent notices published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Mary Belefski, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8461; e-mail address: *belefski.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest if you produce, manufacture, use, consume, work with, or import pesticide chemicals, substances that may have an effect cumulative to an effect of a pesticide, or substances found in sources of drinking water. To determine whether you or your business may be affected by this action, you should carefully examine section 408(p) of FFDCA, 21 U.S.C. 346a(p), and the Safe Drinking Water Act (SDWA), 42

U.S.C. 300j–17. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0109. The official public docket consists of the documents specifically referenced in this action, including EPA's response to comments received and other information related to this action. In addition, documents are also in docket ID number OPPT–2002–0066 for the proposed approach. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

II. Introduction

A. What Action is the Agency Taking?

Following review of public comments received in response to the **Federal Register** notice of December 30, 2002 (67 FR 79611) (FRL–7286–6), EPA is describing the approach it plans to use for selecting an initial group of chemicals to be screened in the Agency's EDSP. This notice does not identify the initial list of chemicals, nor does it describe other aspects of the EDSP such as the administrative procedures EPA will use to require testing, the validated tests and battery that will be included in the EDSP, or the timeframe for requiring the testing or receiving the data. The initial chemical list and the details of the EDSP process that will apply to the initial chemical list will be addressed in subsequent notices published in the **Federal Register**.

EPA anticipates that it may modify its chemical selection approach for subsequent screening based on experience gained from the results of testing chemicals on the initial list, its needs to extend screening to additional categories of chemicals (e.g., non-pesticide substances) and additional pathways of exposure, and the availability of new priority-setting tools (e.g., High Throughput Pre-Screening (HTPS) or Quantitative Structure Activity Relationship (QSAR) models).

EPA developed its EDSP in response to the Congressional mandate in section 408(p) of FFDCA to ''develop a screening program * * * to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effects as [EPA] may designate'' (21 U.S.C. 346a(p)). When carrying out the program, the statute requires EPA to ''provide for the testing of all pesticide chemicals.'' The statute also provides EPA with discretionary authority to ''provide for the testing of any other substance that may have an effect that is cumulative to an effect of a pesticide chemical if the Administrator determines that a substantial population may be exposed to such a substance.'' In addition, section 1457 of SDWA provides EPA with discretionary authority to provide for testing, under the FFDCA 408(p) screening program, ''of any other substances that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance.''

The purpose of this notice is to describe the approach that EPA plans to use to select this initial set of chemicals to undergo screening. EPA will use an approach based in part on the compartment-based priority-setting approach described in the **Federal Register** notices of December 28, 1998 (63 FR 71542) (FRL–6052–9) and December 30, 2002. This approach focuses on human exposure-related factors rather than using a combination of exposure- and effects-related factors. However, in making selections for this exposure-based initial list, EPA does not plan to select substances it considers to be a low priority for early screening under the EDSP because they are anticipated to have low potential to cause endocrine disruption (e.g., certain Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) List 4 inerts, most polymers with number average molecular weight greater than 1,000 daltons, strong mineral acids, and strong mineral bases). Also, chemicals that are being used by EPA as ''positive controls'' to validate the screening assays will be excluded from its initial list.

Although EPA's general focus in this approach for the initial list is on pesticide active ingredients and inerts with relatively greater potential human exposure, EPA believes that the approach will also identify chemicals with high potential for exposure of humans from non-pesticide uses or chemicals with widespread environmental exposures to other organisms. EPA does not intend to develop an ordinal ranking of priorities of the chemicals within any list developed using this approach.

The Agency will use the approach set forth in this notice to select the initial list of chemicals to test first under the

EDSP based primarily on exposure data. Therefore, this initial list of chemicals should not be construed as a list of known or likely endocrine disruptors nor characterized as such. Nothing in the approach for selecting the initial list would provide a basis to infer that any of the chemicals selected for the list interferes with or is suspected to interfere with the endocrine systems of humans or other species.

In subsequent notices published in the **Federal Register**, EPA intends to issue the draft initial list of chemicals resulting from the implementation of this approach, and to describe the other aspects of the EDSP, including the procedures it will use to require the testing and the timeframe for the initial screening. EPA intends to provide time for review and comment on the draft initial list prior to the Agency's imposition of actual screening of the initial chemicals.

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

Section 408(p) of FFDCA requires EPA ''to develop a screening program to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as [EPA] may designate.'' (FFDCA 21 U.S.C. 346a(p)). The statute generally requires EPA to ''provide for the testing of all pesticide chemicals.'' (FFDCA 21 U.S.C. 346a(p)(3)). However, EPA is authorized to exempt a chemical, by order upon a determination that ''the substance is anticipated not to produce any effect in humans similar to an effect produced by a naturally occurring estrogen.'' (FFDCA 21 U.S.C. 346a(p)(4)). ''Pesticide chemical'' is defined as ''any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act, including all active and inert ingredients of such pesticide.'' (FFDCA section 201(q)(1) (21 U.S.C. 231(q)(1))).

III. Background

A. EPA's Endocrine Disruptor Screening Program (EDSP)

EPA initially set forth the EDSP in the August 11,1998 **Federal Register** notice (63 FR 42852) (FRL–6021–3) and solicited public comment on the program in the December 28, 1998 **Federal Register** notice. The program set forth in these notices was based on the recommendations of the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), which was chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2, section 9(c). The EDSTAC was comprised of members representing the commercial chemical and pesticides industries, Federal and State agencies, worker protection and labor organizations, environmental and public health groups, and research scientists. EPA charged EDSTAC to advise the Agency regarding:

1. Methods for chemical selection and setting priorities for screening.
2. A set of available, validated screening assays for early application.
3. Ways to identify new and existing screening assays and mechanisms for their validation.
4. Processes and criteria for deciding when additional tests beyond screening would be needed and how to validate such tests.
5. Processes for communicating to the public about EDSTAC's agreements, recommendations, and information developed during priority setting, screening, and testing.

In response to this charge, EDSTAC recommended that EPA's program address both potential human and ecological effects; examine effects on estrogen, androgen, and thyroid hormone-related processes; and include non-pesticide chemicals, contaminants, and mixtures in addition to pesticides (Ref. 1). Based on these recommendations, EPA developed a tiered approach for their program (referred to as the EDSP). The core elements of EDSP are: Priority setting, Tier 1 screening, and Tier 2 testing. Tier 1 is envisioned as a battery of screening assays (referred to as ''screening'') that would identify substances that have the potential to interact with the estrogen, androgen, or thyroid hormone systems. The purpose of Tier 2 testing (referred to as ''testing'') is to determine whether the substance could, in fact, cause endocrine effects mediated by estrogen-, androgen-, or thyroid-related processes, and to establish the relationship between doses of an endocrine-active substance administered in the test and any effects observed.

In addition, based on EDSTAC's recommendations, EPA proposed in the December 28, 1998 **Federal Register** notice an approach to establish the priority of chemicals for Tier 1 screening. The approach reflected the concern that the quantity and quality of exposure and effects information would be uneven across chemicals. EPA wanted to ensure that data-rich and data-poor chemicals were not directly compared in the priority-setting process because data-poor chemicals might tend to be ranked low under such an approach. Thus, EPA proposed to develop categories of information relating to the production, release, exposure, and hazard of chemicals and to group the chemicals according to the available data. This approach was termed a ''compartment-based approach.'' The compartment-based approach was based on exposure- and effects-related compartments even though it was recognized that effects or toxicity data relevant to endocrine disruption would be extremely limited for the majority of chemicals. To partly compensate for the lack of relevant toxicity data, EPA proposed to conduct a HTPS study addressing all chemicals with a production volume in excess of 10,000 pounds per year, excluding pesticide active ingredients. EPA developed the Endocrine Disruptor Priority Setting Database (EDPSD) to assist in assigning chemicals to compartments and setting priorities. More information on the EDPSD is available at *http://www.epa.gov/scipoly/oscpendo/prioritysetting*.

EPA currently is implementing its EDSP in three major parts. The Agency is:

1. Developing and validating the screening level assays, selecting the appropriate screening assays for the screening battery based on the validation data, and developing and validating Tier 2 tests.
2. Finalizing the priority-setting chemical selection approach to be applied to select an initial list of chemicals to go through screening.
3. Developing the procedures the Agency will use to require screening.

This notice deals only with finalizing the priority-setting chemical selection approach to be applied to select an initial list of chemicals to go through screening. As indicated, EPA intends to address the other aspects of the EDSP in subsequent notices published in the **Federal Register**.

B. Science Advisory Board/FIFRA Scientific Advisory Panel Review

EPA asked its Science Advisory Board (SAB) and the FIFRA Scientific Advisory Panel (SAP), independent scientific review committees of non-EPA scientists, to review jointly the Agency's proposed EDSP. The Agency's charge to the SAB/SAP Subcommittee was broad and complex consisting of 18 questions in four broad areas:

1. Scope of the program.
2. Priority setting.
3. HTPS.
4. Screening and testing.

The SAB/SAP Subcommittee met on March 30–April 1, 1999. Its report was published the following July (Ref. 2). In general, the SAB/SAP Subcommittee

agreed with the program that EPA had developed for conducting endocrine disruptor screening. The following are recommendations from the SAB/SAP Subcommittee with respect to the scope of the program and setting of priorities for screening.

In the December 28, 1998 **Federal Register** notice, EPA explained that it was considering 87,000 substances as potential candidates for testing under EDSP. The SAP/SAB Subcommittee expressed some reservations about the ambitious scope of the universe of chemicals that EPA envisioned as potentially being included in the program. The SAP/SAB Subcommittee felt that developing massive amounts of screening data on a large universe of chemicals would not necessarily expedite the development of the appropriate underpinning that the Agency needs before it proceeds with the screening of the large universe of chemicals that it anticipates will be included in EDSP. The SAB/SAP Subcommittee also expressed concern that it did not see a provision for mid-course correction or optimization of the program. Thus, the SAB/SAP Subcommittee recommended that the EPA start by applying EDSP to 50 to 100 compounds and submit the data to independent review to consider eliminating methods that do not work, and also evaluate how to optimize the program.

The SAB/SAP Subcommittee also recommended against including mixtures in the initial set of chemicals to be tested. The SAB/SAP Subcommittee thought that the question of testing mixtures should be deferred until single-compound methods had been successfully demonstrated.

The SAB/SAP Subcommittee also found that the compartment-based approach to priority setting was supportable when ranking is based on both effect and exposure data. It suggested that the greatest weight should be given to chemicals for which there are data that indicate actual human or environmental exposure and effects. Lower weight should be given to chemicals for which the data are indicative of probable exposure (in food or drinking water) or probable effects (from animal studies). The lowest weight and priority should be given to chemicals for which the data are indicative of possible exposure (based on release or production volume) or possible effects (from *in vitro* or HTPS assays). The SAB/SAP Subcommittee expressed concern that the lack of effects data on the universe of chemicals currently in commercial use would lead to a database that only identifies known problem chemicals that are already well studied. To overcome this obstacle, the SAB/SAP Subcommittee encouraged the development of new techniques including QSAR and molecular modeling to help identify the bio-available, potentially active compounds for further testing in EDSP. The SAB/SAP Subcommittee supported the concept of nominations by citizens, but recommended that the process needed further definition.

Finally, the SAB/SAP Subcommittee agreed with EPA's assessment that the HTPS system, which EPA subjected to a demonstration project, was not ready for use but that the concept was still valuable. The SAB/SAP Subcommittee encouraged EPA to be open to other types of assays for HTPS including receptor binding, gene chip and microarrays, and computer modeling. The SAB/SAP Subcommittee also gave some guidance regarding further development and employment of HTPS, including the need for standardization and validation of any system to be used in priority setting.

C. Public Comments on Priority Setting

In addition to comments provided by the SAB/SAP Subcommittee, comments were also provided by the public on priority setting in response to EPA's EDSP Proposed Statement of Policy notice published in the December 28, 1998 **Federal Register**, at two public meetings held on the Endocrine Disruptor Priority Setting Database (EDPSD), and from the request for comment on the proposed approach in the December 30, 2002 **Federal Register** notice. The January 20, 1999 meeting was published in the **Federal Register** of December 28, 1998 (63 FR 71568) (FRL–6052–8) and the June 5–6, 2000 meeting was published in the **Federal Register** of May 19, 2000 (65 FR 31900) (FRL–6559–9). All of these comments were helpful to the Agency in developing the approach presented in this notice for selecting the initial list of chemicals to be screened in EDSP.

IV. Summary of Comments Received on EPA's Proposed Approach to Selecting the Initial Set of Chemicals

After reviewing all of the comments received, EPA has decided to make some changes to the proposed approach. The priority-setting issues raised in the most recent comments on the proposed approach are addressed in the Comment Response Document for Endocrine Disruptor Chemical Selection/Priority Setting (Ref. 3), which can be found in the public docket. This unit addresses the major comments that caused EPA to revise its proposed approach.

A. Use of Effects Data for Chemical Selection

In the proposed chemical selection approach in the December 30, 2002 **Federal Register** notice, EPA stated that, prior to publishing the draft initial list of chemicals for screening, the Agency intended to review the available effects information for those candidate chemicals identified using the exposure-based approach, in order to identify any chemical for which the effects information either clearly indicates an endocrine-mediated effect/perturbation or clearly indicates low potential to cause endocrine disruption. Such chemicals would then be excluded from the initial list. Most commenters urged EPA to utilize existing effects data to the greatest extent that is scientifically justifiable, and emphasized that an exposure-based approach should only be used, if at all, for the initial list.

Following review of the comments and further evaluation of the proposed approach, EPA has decided for the initial list to limit its review of effects data and primarily select chemical candidates based on exposure. With two exceptions where EPA believes that it has sufficient information of an appropriate quality, EPA generally believes that it lacks sufficient information and experience to determine whether a chemical should be designated as a ''potential endocrine disruptor.'' As a general matter, EPA will therefore not exclude chemicals from the initial list based on a finding of the chemical's endocrine disruption potential.

Generally, with respect to using additional existing effects data, given the current state of scientific understanding of endocrine system effects and the types of testing currently available for most pesticide chemicals, EPA has decided for this initial list that it would be impractical to establish criteria for judging whether a chemical should be designated as a ''potential endocrine disruptor'' and removed from the initial group for screening. Although a relatively broad range of toxicity data are available for pesticide active ingredients regulated under FIFRA, in most cases EPA has not yet established how the available data might be confidently used to predict the endocrine disruption potentials of these chemicals. This may be due to the non-specific nature of an effect or effects observed, questions related to whether the mode of action in producing a given effect or effects is or are endocrine system-mediated in whole or in part, or the lack of relevant data to make a judgement altogether. When the draft

initial list is published, any company subject to a testing requirement may request, during the comment period, a waiver (supported by appropriate data) on the grounds that the chemical is an endocrine disruptor and that EDSP screening is unnecessary.

EPA has identified two exceptions. First, chemicals that are being used by EPA as ''positive controls'' to validate the screening assays will be excluded from its initial list. Inclusion of these chemicals in the initial list would be to require companies to generate duplicative data unnecessarily. These chemicals were selected because they were expected to elicit positive responses in the assays proposed to identify estrogen-, androgen-, and/or thyroid-system disruptors. Second, EPA does not plan to select substances it anticipates as having low potential to cause endocrine disruption (e.g., certain FIFRA List 4 inerts, most polymers with number average molecular weight greater than 1,000 daltons, strong mineral acids, and strong mineral bases), and considers these substances to be a low priority for early screening under the EDSP. High molecular weight substances are unlikely to reach molecular receptors or other target tissue; highly reactive chemicals will destroy tissue at the point of entry leading to toxicity other than through the endocrine system.

B. Appropriateness of the Proposed Data Sources

Many comments received on the appropriateness of the data sources identified in the December 30, 2002 **Federal Register** notice questioned the relevance and quality of the proposed data sources. Specific issues raised in these comments included: The inability to analyze and fully understand the data in some data sources because the raw data underlying the summary data are not accessible; several databases are very dated and may not be relevant to potential exposures today; several databases may not be relevant to or extrapolated to the U.S. population as a whole; some databases/data sources used biased sampling rather than random or probability design; although the data do indicate exposure, they do not fully characterize exposure in terms of time, duration, and level of exposure; and that the EPA review of the databases should comply with the Agency's policies provided in its December 2002 information quality guidelines (Ref. 4).

In accordance with EPA's information quality guidelines, EPA has reviewed the data sources described in this chemical selection approach for the initial round of screening in the EDSP. Following review of the proposed databases (Ref. 5), EPA made the determination to exclude the Heidelberg College's Monitoring Data at this time because it has limited public availability, at best, and because comparable data are available from two other sources that are publicly available. For the remainder of the data sources, EPA believes that the data sources are appropriate and relevant for the intended application and that the quality and transparency of the information is sufficient for the intended use. The most current versions of the databases will be used and evaluated when developing the initial list.

EPA acknowledges that many of the proposed data sources may be limited in their usefulness for certain applications but believes, nonetheless, that the data sources are of appropriate quality for their intended use and purpose for a number of reasons. First, the most current versions of the databases will be used and evaluated when developing the initial list. In addition, the limitations of an individual data set can be overcome, to some extent, by consideration of multiple sets of data and multiple databases. EPA thinks that, when considered collectively, the databases discussed in Units VI. and VII. are not as vulnerable to criticism as a particular individual data set. Finally, EPA generally determines the quality of data sources based on the Agency's intended use of the data. For the initial list, EPA will select 50 to 100 pesticide active ingredients and HPV chemicals used as pesticide inerts to which the public may be more highly exposed. EPA will use these data sources to help select just the first round of chemicals to be screened and does not intend to use these sources to create a definitive, scientifically rigorous list of chemicals with a high potential for exposure, nor to develop quantitative exposure estimates in this analysis. The chemicals identified under this approach belong to the group of chemicals that are required to be tested under FFDCA section 408(p)(3)(A)—pesticide chemicals. Because Congress specifically required that these chemicals be tested, the impact of EPA's assessments in this case is quite limited—merely determining the timing of the testing, rather than whether the testing is to be conducted. Consequently, EPA believes the proposed data sources are of sufficient quality for their intended use.

C. Synchronization of the Endocrine Disruptor Screening Program's Components

In response to comments and consistent with its intent to have the initial list drafted and finalized when the screening assays are available for testing, EPA plans on publishing the draft initial chemical list well in advance of when an appropriate screening test battery is ready for use. This interval is intended to allow adequate time for EPA to solicit and consider public comments on the draft list without delaying the initial round of testing.

V. EPA's Approach to Selecting the Initial Set of Chemicals to Undergo Screening

On the basis of EPA's experience to date and comments received, EPA is setting forth its approach for selecting the first group of chemicals to be screened in the EDSP. Based on the SAB/SAP Subcommittee recommendations and public comments, EPA will select and screen approximately 50 to 100 chemicals drawn from pesticide active ingredients and pesticide inerts with relatively large overall production volumes considering both pesticide and non-pesticide uses (HPV/Inert chemicals) to help the Agency further refine the EDSP. EPA will list the chemicals alphabetically, or numerically by CAS number, to avoid the appearance of a specific ranking of the chemicals selected for initial screening.

As recommended by the SAP/SAB Subcommittee, the Agency intends to conduct a review of the data received from the screening to evaluate whether the program could be improved or optimized, and if so, how. In addition to Agency scientists, the review of the initial list screening results will be evaluated by an expert panel such as one under the SAP/SAB Subcommittee. Evaluation of the screening results for the initial 50 to 100 chemicals will add substantially to our understanding of the performance of the Tier I test battery. Thus, the evaluation may identify methodological issues encountered when this larger set of chemicals are tested by laboratories not involved in the assay validation effort that may lead to further optimization of the assays to improve performance. The evaluation may also identify interpretive issues such as a determination that a specific assay may not be needed because another assay in the screening battery adequately measures the same effect. Other information from the review process

may help identify potential issues or areas for improvement, such as whether there is sufficient laboratory capacity or problems with correctly performing the tests, whether there are issues with the industry's ability to test the identified chemicals, or whether there are any procedural changes that would improve the overall program.

EPA will use an approach based in part on the compartment-based priority-setting approach described in the December 28, 1998 **Federal Register** notice that provided details about the EDSP and that the SAB/SAP Subcommittee commented on in 1999. As explained in Unit IV.A., the approach focuses primarily on exposure-related factors rather than using a combination of exposure- and effects-related factors. Although EPA will use many of the exposure data sets previously identified for use in the EDPSD in this approach, EPA anticipates not directly using the EDPSD itself at this time in light of the narrower scope and focus of this initial list. EPA anticipates that it will modify its chemical selection approach for subsequent screening lists based on experience gained from the results of testing chemicals on the initial list, the feasibility of incorporating different categories of chemicals (e.g., non-pesticide substances), and the availability of new priority-setting tools (e.g., HTPS and QSAR models).

EPA will use several groups of data to identify pesticide active ingredients to include on the initial list of chemicals for screening. These data focus on human exposure by different pathways:

1. As a consequence of consuming food containing pesticide residues.
2. As a consequence of consuming drinking water containing pesticide residues.
3. As a consequence of residential use of pesticide products.
4. Through occupational contact with pesticide-treated surfaces.

For each of the four pathways, EPA will use the most current data available from each data source to identify active ingredients. To ensure, to the extent possible, that all pesticide chemicals are addressed using this approach based on comparable exposure potential, EPA is most interested in identifying and selecting data sources which provide occurrence/usage data on a broad range of pesticide chemicals and across a wide geographical scope. Although the final selected data sources do have limitations, EPA is confident that these data sources can be used to identify pesticide active ingredients likely to be among those having either potentially widespread or higher levels of human exposure than would be expected for other active ingredients. EPA does not plan to use these data sources to create a definitive, scientifically rigorous list of pesticide chemicals to which the public is the most highly exposed. Nor is EPA proposing to use these databases to create quantitative exposure estimates in this analysis.

EPA is giving higher priority to chemicals likely to have human exposure via multiple pathways, with the highest priority being given to substances having potential exposure through all four pathways, followed by those having potential exposure via three pathways, etc. for inclusion on the list for initial screening. Details on EPA's approach for selecting pesticide active ingredients are presented in Unit VI.

EPA will use a similar approach to identify HPV/Inert chemicals to be included in the initial list for screening in the screening battery. However, EPA generally has more extensive information available to assess potential exposure to pesticide active ingredients via food, water, occupational, and residential exposure pathways than is available to assess exposure to HPV/Inert chemicals. In addition, EPA generally has more extensive information available on usage (including both agricultural and residential) of active ingredients than is available for HPV/Inert chemicals (including both pesticidal and non-pesticidal uses of those same substances). For these reasons, the specific pathways and data sources EPA has identified for selecting an initial set of HPV/Inert chemicals for endocrine disruptor screening differ somewhat from those for selecting pesticide active ingredients.

For HPV/Inert chemicals, EPA will focus on several indicators of the potential for human exposure, including production volume, specific pathways of exposure, and presence in human tissues. First, EPA will use the most current databases available to identify chemicals that are both pesticide inerts and HPV (defined as chemicals that are manufactured or imported into the United States for all uses in amounts equal to or greater than one million pounds per year) chemicals. This first step will focus initial screening of pesticide inerts on chemicals with higher potential human exposure on the basis of large amounts produced or imported each year in the United States. Second, EPA will review the most current existing data available for its use to identify HPV/Inert chemicals that have been found to be present in: Human biological samples, ecological tissues that have human food uses (i.e., fish tissues), drinking water, and/or indoor air. Using this approach, an HPV/Inert chemical appearing in monitoring data from one or more of these media, would be a higher priority for testing than an HPV/Inert chemical that does not appear in monitoring data from any of the media. Details on EPA's priority-setting approach for selecting HPV/Inert chemicals are presented in Unit VII.

While EPA's general focus in this approach is on pesticide active ingredients and HPV/Inert chemicals with relatively greater potential human exposure, this does not necessarily mean that the list developed using this approach will not contain substances which also have potentially high levels of environmental exposure to ecological receptors. As explained in Units VI. and VII., EPA believes that the approach to select an initial list of pesticide active ingredients and HPV/Inert chemicals for screening, while focused on human exposure, will also capture many chemicals to which other organisms have potential for widespread environmental exposures. In addition, because the screening battery will likely include assays involving different species (e.g., amphibians and fish) whose results are relevant to both humans and wildlife, EPA will capture information relevant to ecological protection.

The approach is consistent with the proposed approach and many of the comments received on the December 30, 2002 **Federal Register** notice. For its approach EPA is:

1. Focusing chemical selection for this initial list on the subset of chemicals for which testing is required (i.e., pesticide chemicals).
2. Using exposure data as the primary basis for chemical selection rather than using HTPS, QSARs, or other hazard data in conjunction with exposure data.
3. Excluding substances for the initial list anticipated to have low potential to cause endocrine disruption (e.g., certain FIFRA List 4 inerts, most polymers with number average molecular weight greater than 1,000 daltons, strong mineral acids, and strong mineral bases).
4. Deferring consideration of nominations from the public.
5. Not including mixtures for the initial list.
6. Excluding chemicals that are no longer produced or used in the United States.
7. Excluding ''positive control'' chemicals used for the validation of the screening assays.

EPA will issue an additional **Federal Register** notice setting forth the draft initial list of chemicals it proposes for screening. EPA expects that low-priority designations will initially be made on a case-by-case basis. Therefore, the **Federal Register** notice in which EPA will publish for public comment the draft initial list of chemicals for screening will clearly identify any chemical, which was identified having priority for testing through the application of the exposure-based criteria, but was excluded because it is considered to be a low priority for one of the reasons listed in this unit. That **Federal Register** notice will explain the rationale underlying any decisions made for selection of chemicals in the draft initial list. The draft initial list of chemicals is expected to be published to allow sufficient time for review and comment prior to actual testing. After considering comment on the draft list of chemicals, EPA will issue the initial list of chemicals for which screening will be required.

VI. Approach for Selecting Pesticide Active Ingredients

As proposed, EPA will use several criteria to identify pesticide active ingredients for the initial round of the screening. These criteria would focus on human exposure by different pathways: As a consequence of consuming food containing pesticide residues, drinking water containing pesticide residues, and residential use of pesticide products; and through occupational contact with pesticide-treated surfaces. For each of the four pathways, EPA will review the most current existing databases available to identify active ingredients generally expected to be among those having either widespread or high levels of human exposure.

While EPA's general focus is on pesticide active ingredients with relatively greater potential human exposure, this focus does not necessarily mean that the list of active ingredients will not contain substances which also have potentially high levels of environmental exposure to ecological receptors. Many of the pesticide active ingredients having greater potential for human exposure will also have greater potential for exposure to wildlife. For example, one pathway of human exposure, drinking water, is also a pathway through which aquatic life and many terrestrial species are exposed. Most of the databases that EPA will consider in evaluating active ingredients for exposure through drinking water contain monitoring data collected on raw surface water (i.e., before the water enters a public water system). Thus, these monitoring data show the levels of pesticide residues that fish, amphibians, and other aquatic species will encounter. Similarly, when data show higher and more widely distributed levels of pesticide residues in food, EPA thinks that such residues generally tend to reflect greater usage and/or persistence of the pesticide on crops and thus, greater environmental loads. Accordingly, EPA believes that the approach to evaluate pesticide active ingredients, while focused on human exposure, will also capture many active ingredients with widespread environmental exposures.

A. Food Pathway

Every person eats food and a significant portion of food contains some amount of pesticide residues, although usually at very low levels. Therefore, pesticide residues in food have the potential to cause widespread human exposure. Pesticides have different use patterns and have different physical and chemical properties that affect how they move in the environment and how quickly they break down. As a result, there are often significant differences among pesticides in the proportion of food containing residues and in the levels of such residues. People also consume different amounts of different foods. All of these factors mean that people ingest greater quantities of some pesticide active ingredients than others.

To evaluate the interplay of these different variables, EPA will identify the pesticide active ingredients which are found most frequently as residues on the top 20 foods that people consume. First, EPA will use the most recent Continuing Survey of Food Intake by Individuals (CSFII) to determine the mean amount of each raw agricultural commodity consumed in the general population. The CSFII is a database derived from a survey performed by the U.S. Department of Agriculture (USDA) in 1994–1996 and supplemented with additional survey responses collected in 1998. USDA collected food diary information from over 20,000 individuals who were interviewed on 2 non-consecutive days, generally spaced 3 to 10 days apart. After appropriate statistical weighting, the survey, in the aggregate, is representative of the U.S. population in terms of age, gender, major ethnic groups, and socio-economic status. Moreover, sampling was representative of different days of the week, seasons of the year, and parts of the country. Extensive quality control procedures assured that the data collected in the survey were accurate and reliable. More information on USDA's food surveys and the CSFII (1994–1996) is available at *http://www.barc.usda.gov/bhnrc/foodsurvey*.

Using standard, scientifically peer-reviewed recipes, EPA has converted the reported food consumption for each CSFII survey respondent into the constituent raw agricultural commodities. For example, if a person reported eating six ounces of beef stew, EPA estimated the amount of beef, carrot, potato, and each other raw agricultural commodity used in making that quantity of beef stew. EPA made similar conversions for each of the different finished foods reported in the CSFII—from apple pie to yogurt. EPA then estimated the total amount of each of the various raw agricultural commodities eaten over the course of the day, for example summing the amount of apple consumed from drinking cider and eating apple sauce. The results of these recipe translations appears in the revised Food Commodity Intake Database (FCID) (Ref. 6). Information on the FCID can be reviewed at *http://www.barc.usda.gov/bhnrc/foodsurvey/fcid.html*. This individual food consumption database provides the basis for identifying the top 20 foods consumed, in terms of mean daily consumption for the general population. Table 1 of this unit presents these raw agricultural commodities.

TABLE 1.—TOP TWENTY FOODS

Foods accounting for the largest quantity of food intake by individuals (arranged alphabetically)	
1	Apple
2	Banana
3	Beef
4	Carrot
5	Chicken
6	Corn, field
7	Corn, sweet
8	Egg
9	Grape
10	Lettuce
11	Milk
12	Onion
13	Orange
14	Pork
15	Potato
16	Rice
17	Soybean, oil
18	Sugar
19	Tomato
20	Wheat

Having identified the top 20 raw agricultural foods, EPA will characterize the pesticide residue levels on these foods using information collected by two Federal Agency monitoring programs, the USDA Pesticide Data Program (PDP) and the Surveillance

Monitoring Program conducted by FDA's Center for Food Safety and Applied Nutrition. PDP has been collecting pesticide residue data since 1991. PDP is designed to provide a nationally representative database on the distribution of pesticide residues in food as close as possible to the actual time of consumption as practical. Using analytical methods that have been standardized and validated, and following strict quality control procedures, USDA has focused on foods highly consumed by children throughout the year. Over the years of operation, PDP has collected data on over 290 different pesticides and 50 different commodities. Additional information can be found at *http://www.ams.usda.gov/science/pdp/index.htm*. The FDA Surveillance Monitoring Program is designed primarily for enforcement of pesticide tolerances on imported foods and domestic foods shipped in interstate commerce. Domestic samples are collected as close as possible to the point that the food enters the distribution system. FDA samples imported food at the port of entry into the United States. Additional information on the FDA program appears at *http://www.cfsan.fda.gov/~dms/pesrpts.html*.

Because of the differences in how samples are collected and handled, EPA will rely on the PDP database when both sources cover the same pesticides and commodities. The FDA Surveillance Monitoring Program data covers different pesticides and commodities in different years from the PDP monitoring (e.g., in 1999, FDA used analytical methods capable of detecting 366 different active ingredients). Therefore, in making its weight-of-the-evidence judgement, EPA will consider the FDA information as a supplement to the information from the PDP database.

EPA will review the two residue monitoring databases to identify the pesticide active ingredients which appear on the largest proportion of the samples, focusing on the 20 foods which make up the largest part of the U.S. diet. EPA will then review all of the information to make a judgment about whether the pesticide is likely to have relatively more widespread or higher levels of human exposure by the food pathway than other pesticides. This judgement involves consideration of such factors as the number of foods on which the residue is detected, the quantity of the diet represented by the food, and the overall number of detections and the frequency of detection.

EPA recognizes that this approach would be more likely to give higher priority to the pesticides which are the subject of routine monitoring in either PDP or FDA's Surveillance Monitoring Program. Both programs rely primarily on ''multi-residue methods'' that are capable of detecting many different chemical substances using a single analytical procedure. Active ingredients which require specialized analytical methodology may not be looked for and thus would be unlikely to be included for consideration in the food pathway. This limitation particularly applies to newer pesticide active ingredients. Notwithstanding these limitations, EPA believes the approach described is a practicable approach for identifying pesticide active ingredients with widespread or high levels of exposure.

B. Water Pathway

Portions of the general population may be exposed to pesticide residues in sources of drinking water. Although monitoring data indicate that most pesticide active ingredients are rarely detected, analytical surveys in virtually every region of the country have detected a number of active ingredients in ground and surface water used as sources of drinking water. Monitoring also indicates that, even when found in water, residue levels vary significantly both seasonally and regionally for a single pesticide, as well as across pesticides. Particularly for surface water, residues tend to occur in pulses that can last days to weeks to months, depending on the type of water body and the pesticide. Almost every person consumes some water every day, either in prepared foods or beverages (e.g., coffee, tea, or reconstituted juice) or simply by drinking water; therefore, water may be a significant source of exposure.

To assess relative exposure to different pesticides in water, EPA will examine a number of different databases that contain the results of programs to monitor surface and ground water for the presence of pesticide residues. The different media covered by these databases include, finished drinking water, ambient water, finished ground water, fish tissue, and sediment, all of which reflect the presence of a substance in water sources. The presence of a substance in these media establishes the potential for exposure via drinking water. All sources of drinking water exposure will be considered of equal priority.

As with the residue data for the food pathway, EPA will compile the information from the various databases concerning the detection of different pesticides in water. After compiling the information, EPA will examine the results to identify pesticides for which there appears to be greater potential for widespread human exposure, based on factors such as the number of samples and the geographic distribution of the detections. The presence of a single or only a few detections of a pesticide in a limited geographic area typically would not be a sufficient basis for concluding that the pesticide should be identified as potentially having either widespread or high levels of exposure by the water pathway.

These databases, which contain data collected by Federal and State agencies, academicians, pesticide companies, and others, are summarized in this unit:

1. *EPA Pesticides in Ground Water Database*. The Pesticides in Ground Water Database (PGWDB) was created to provide a more complete picture of ground water monitoring for pesticides in the United States. It is a collection of ground water monitoring studies conducted by Federal, State, and local governments; the pesticide industry; and private institutions between 1971–1991. The PGWDB compiles, in tabular format, data from monitoring of untreated ground water and contains data only from studies in which pesticides were included as analytes. Some data limitations include: Age of the data; differences in the design of studies; lack of historical pesticide use or hydrological information; and lack of information on well use, sampling practices, and laboratory procedures. Further details can be found in *EPA Pesticides in Ground Water Database, A Compilation of Monitoring Studies: 1971–1991 National Summary* (Ref. 7).

2. *EPA Chemical-Specific Monitoring Data*. Pesticide registrants have conducted and submitted to the Agency targeted surface water and ground water monitoring studies for approximately 50 pesticide active ingredients. The Agency decides whether to require monitoring of untreated or ambient surface or ground water for a pesticide based on the environmental fate characteristics (persistence and mobility) of the pesticide; the current or proposed use patterns for the pesticide; and other information that would indicate potentially significant levels of the pesticide that could be present in water. The design of monitoring studies takes into consideration application rate, crops, and the location of potentially more vulnerable use sites. These studies are performed under Good Laboratory Practice regulations, and contain internal quality assurance procedures. When submitted, the monitoring data undergo primary and secondary review

by Agency scientists. In implementing its approach for selecting the initial list of chemicals for screening, EPA will review these chemical-specific monitoring data sources to determine if they contain information for pesticide active ingredients without data from other water monitoring data sources.

3. *United States Geological Survey/EPA Reservoir Monitoring Study*. The United States Geological Survey (USGS)/EPA Reservoir Monitoring Study was a pilot monitoring program initiated by the USGS and EPA to provide information on pesticide concentrations in drinking water and to assist in the implementation of FQPA. Drinking-water utilities that withdrew water from reservoirs were sampled in 1999 and 2000. Water samples were collected from raw water (at the intake point) and from finished drinking water (at the tap prior to entering the distribution system). At some sites, samples were also collected at the reservoir outflow. Sampling frequencies were designed to measure long-term mean and short-term peak concentrations of pesticides in drinking water. The analytical methods used for analyzing the pesticides in the water samples included 178 different pesticides and degradation products. Additional information on the USGS/EPA Reservoir Monitoring Study can be found in *Pesticides in Select Water Supply Reservoirs and Finished Drinking Water, 1990–2000: Summary of Results from a Pilot Monitoring Program* (Ref. 8).

4. *Environmental Monitoring and Assessment Program*. Environmental Monitoring and Assessment Program (EMAP) is an EPA research initiative designed to support the development of tools necessary to monitor and assess the status and trends of national ecological resources. Research is conducted on various ecosystems (e.g., estuaries, forests, rangelands, and lakes). Sediment samples were collected in 18 states at various times between 1990 and 1998. This data source provides information about the contaminants present in sediment/soil that humans and wildlife may contact. EMAP includes relevant data for over 170 chemicals and three separate data sets for estuary sediments. In addition, six additional estuary data sets are now available that will also be considered. Extensive field and laboratory quality assurance/quality control (QA/QC) procedures were performed during the collection and analysis of the samples. Further details can be found at *http://www.epa.gov/emap*.

5. *National Sediment Inventory*. The Water Resources Development Act (WRDA) of 1992 directed EPA, in consultation with the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Army Corps of Engineers (USACE), to conduct a national survey of data regarding the quality of sediments in the United States. To comply with the WRDA mandate, EPA's Office of Science and Technology initiated the National Sediment Inventory (NSI). The NSI is a database that documents the composition of sediment in rivers, lakes, oceans, and estuaries. The NSI tissue residues studies (primarily fish) help assess sediment quality and can be used to assess potential exposure of humans to these chemicals through the consumption of fish. Also, sediment chemistry data are evaluated for theoretical bioaccumulation potential. The NSI includes data collected by a variety of Federal, State, regional, local, and other monitoring programs from 1980 through 1999. It includes over 4.6 million analytical observations for over 50,000 monitoring stations across the country of sediment chemistry, tissue residues, and sediment toxicity data. NSI's minimum data requirements include monitoring program identification, sampling date, latitude and longitude coordinates, and measured units. EPA retains additional data such as QA/QC information, if available, but did not require that information for a data set to be included in NSI. Additional limitations of the compiled data include the mixture of data sets derived using different sampling strategies, incomplete sampling coverage, and the age and quality of the data. Because the data analyzed in the NSI report were collected over a relatively long period of time, conditions may have changed since the sediment was sampled. Further details on the NSI database and the National Sediment Quality Survey, which the NSI was developed to support, can be found at *http://www.epa.gov/waterscience/cs/nsidbase.html*.

6. *National Drinking Water Chemical Occurrence Database*. EPA developed the National Drinking Water Chemical Occurrence Database (NCOD) to satisfy the statutory requirements set forth by Congress in the 1996 amendments to SDWA to maintain a national drinking water contaminant occurrence database using occurrence data for both regulated and unregulated contaminants in public water systems. NCOD provides a library of water sample analytical data (or ''samples data'') that EPA is currently using and has used in the past for analysis, rulemaking, and rule evaluation. The drinking water sample data, collected at public water systems, are for both regulated and unregulated contaminants. The data have been extensively checked for data quality and analyzed for national representativeness.

Currently, NCOD provides links to the unregulated contaminant monitoring data (UCMR), which are being collected and added to NCOD, as well as to static data sets that have been used in published regulatory analyses. These latter (static) data sets have been extensively quality-checked, and their corresponding reports provide full descriptions (meta data) of the data. Further details can be found at *http://www.epa.gov/safewater/data/ncod.html*.

7. *National Stream Quality Accounting Network Data*. The National Stream Quality Accounting Network (NASQAN), a monitoring and data collection program conducted by the USGS, is designed to characterize raw surface water and sediment in large sub-basins of rivers, determine regional source areas for chemicals, and assess the effects of human influences on observed concentrations and amounts of chemicals. Since 1995, NASQAN has focused on monitoring the water quality of four of the nation's largest river systems: The Mississippi, the Columbia, the Colorado, and the Rio Grande. A network of 40 stations monitors the concentrations of a broad range of chemicals including pesticides, major ions, and trace elements. NASQAN contains relevant data for over 70 chemicals. NASQAN samplers collect quality control samples to evaluate the quality of sampling data. However, the data in NASQAN do not characterize ambient water quality throughout the United States, only for four river basins and sub-basins. Further details can be found at *http://water.usgs.gov/nasqan*.

EPA will use the most current NASQAN data available. Following a brief review of current NASQAN data, EPA determined that no sediment data exists and only surface water data were available for pesticide active ingredients. NASQAN data may be updated prior to selecting the initial list of chemicals for screening and it is possible that sediment data may be made available and used for pesticide active ingredients for screening.

8. *National Water Quality Assessment Program*. Congress appropriated funds in 1986 for the USGS to design and implement a program to address questions related to status and long-term trends in raw surface and ground water quality at national, regional, and local scales. The USGS began a pilot program in seven project areas to develop and

refine a plan for the National Water Quality Assessment (NAWQA) Program. In 1991, the USGS began full implementation of the program. The NAWQA Program builds upon an existing base of water-quality studies of the USGS, as well as those of other Federal, State, and local agencies. The NAWQA Program was designed to study 60 of the Nation's most important river basins and aquifer systems, which are referred to as study units. A national map of these study units shows that they are distributed throughout the Nation and cover a diversity of hydrogeologic settings. More than two-thirds of the Nation's freshwater use occurs within the study units and more than two-thirds of the people served by public water-supply systems live within their boundaries. The 60 study units have been divided into groups of 20 study units each, and their intensive data collection phases have been staggered to allow efficient and effective use of resources. The first 20 studies began in 1991, the second group began in 1994, and the third group began study in 1997. Due to funding constraints, only 14 of the original first group of 20 study units began a second cycle of study in the year 2000. The cycle is intended to continue into the future with a total of 52 study units to provide both short-term information necessary for today's water-resource management decisions, and the long-term information needed for policy decisions. Further details can be found at *http://water.usgs.gov/nawqa*.

9. *USDA Pesticide Data Program Water Data*. The Pesticide Data Program (PDP) was designed by USDA in 1991 to collect data on pesticide residues consumed in the United States. PDP samples are collected as close as possible to the time of consumption, and are also designed to provide better pesticide residue data for the foods most consumed by children. PDP is a Federal-State partnership with program operations carried out with the support of 10 States that collectively represent 50% of the U.S. population. Samples are collected using a statistically reliable, random sampling protocol, and the number of samples collected is apportioned according to State population or commodity production figures. PDP has tested over 50 different commodities, including drinking water, for more than 290 pesticides.

EPA recognizes that most of the monitoring databases just described report results from samples of ambient or untreated water, rather than treated drinking water prepared by a drinking water facility for its customers. To the extent that treatment methodologies (such as flocculation, softening, filtration, chlorination, sedimentation, etc.) either remove or transform the pesticide residue in the source water, residues found in the untreated water may not represent exposure of the public consuming the finished water. EPA has considered the impacts of various treatment methodologies on different classes of pesticides found in untreated water and concluded that while conventional water treatment processes (such as coagulation/flocculation, sedimentation, and filtration) can reduce or remove some pesticides, there may be little or no effect on the removal of other pesticides (Ref. 9). Thus, the Agency regards the results of monitoring untreated or ambient water as a plausible and appropriate indicator of potential human exposure.

Other factors affect the interpretation of water monitoring data. These data sources represent compilations of data to support a variety of regulatory and surveillance programs. Monitoring is most likely to detect the presence of pesticide residues in water if it is conducted in an area where the pesticide has been used, and samples are collected at a time when residues are likely to occur. Moreover, the analysis must employ methods sensitive enough to detect any residue. Often, however, monitoring reports lack sufficient information to evaluate how well the above conditions were met. Consequently, evaluation of water monitoring data requires considerable judgment. See the discussion of considerations affecting the evaluation of water monitoring data in *Estimating the Drinking Water Component of a Dietary Exposure Assessment* (Ref. 10) and the *EPA Background Paper for the FIFRA Scientific Advisory Panel Meeting on Monitoring Strategies for Pesticides in Surface-Derived Drinking Water* (Ref. 11).

The limitations of an individual data set can be overcome, to some extent, by consideration of multiple sets of data and multiple databases. EPA thinks that, when considered collectively, the databases discussed in Unit VI.B. are not as vulnerable to criticism as a single data set. Generally, all of these databases include studies with high levels of quality control, and together they provide wide temporal and spatial coverage for a large number of pesticides. Thus, the Agency believes the databases in Unit VI.B. would provide a reliable basis for drawing conclusions about the relative potential of different active ingredients to leach into ground water or run off into surface water in different parts of the country.

In light of these considerations, EPA will review the databases described to identify those active ingredients which appear relatively more frequently and/or in more geographical areas than other pesticides. Because the scope of monitoring varies from pesticide to pesticide, EPA will use a weight-of-the-evidence approach to assess the frequency and geographic distribution of pesticide residues in water.

EPA's reliance on these databases would necessarily have some limitations. For example, most monitoring looks only for the ''parent'' compound (i.e., the pesticide active ingredient), rather than for environmental degradation products or compounds formed by chemical reactions during the treatment of raw water sources in a drinking water facility. Further, like food residue monitoring programs, monitoring efforts rely on multi-residue methods that may not detect certain compounds or classes of compounds. Notwithstanding these limitations, EPA believes that the approach described is a practicable approach for identifying pesticide active ingredients generally expected to be among those having either widespread or high levels of human exposure.

C. Residential Use Pathway

Human exposure to pesticides may occur as the result of use of pesticidal products in and around homes, schools, businesses, public areas, golf courses, and similar sites. Such use patterns, collectively referred to as ''residential use,'' include: Lawn and garden treatments, insect repellants, termite and other indoor insect control, fumigation products, products applied to pets for flea or tick control, household sanitizers, and disinfectants, and many more.

EPA will use pesticide product labeling information as the primary indicator of pesticides whose use involves potential human exposure by this pathway. EPA will review its databases and identify those active ingredients approved for residential use. Aside from products approved only for limited exposure uses, such as rodenticides applied in tamper resistant bait boxes, all currently registered residential use pesticides will be identified as having higher priority with respect to the residential use pathway. EPA may also consider the number of residential uses for which each pesticide active ingredient is approved in selecting the initial list of chemicals for screening.

The Agency recognizes that registration of a pesticide for residential use does not necessarily mean that it

would be widely used or that its use would entail significant levels of human exposure. EPA, however, generally lacks information to compare the extent of application of different active ingredients for residential uses. Moreover, EPA does not have a basis for distinguishing among various residential use patterns on the basis of those which consistently have potential for higher levels of human exposure. Thus, EPA does not regard its basis for selecting priority chemicals for this pathway as being as effective in setting priorities among active ingredients as the criteria used for the other pathways. Nonetheless, residential use pesticides involve potential exposures to the general population, and the Agency believes it is appropriate to consider giving priority to some of these products.

D. Occupational Exposure Pathways

Occupational exposure can occur either as a person mixes, loads, or applies a pesticide product (i.e., during pesticide use), or as a person, during some other occupational activity, comes in direct, repeated contact with pesticide residues present on previously treated surfaces (i.e., post-application exposure). Although numerically smaller than the populations exposed to pesticides through food, drinking water, and residential use, individuals receiving occupational exposures generally experience significantly higher levels of exposure than the larger groups encounter by the other pathways. Based on available data and current agricultural practices, the number of workers exposed through post-application is greater than the number of workers exposed through mixing, loading, and applying pesticides. As a result, EPA will focus on post-application exposures.

Many factors affect the post-application exposure of agricultural workers, most notably the type of work activity and the level of residue present on pesticide-treated surfaces. As will be discussed in more detail in this unit, different activities involve differing levels of contact with pesticide-treated surfaces and therefore can lead to different levels of exposure. Exposure levels also depend on the amount of residue available on a treated surface. This, in turn, depends on the amount of pesticide initially applied, how quickly the material degrades or is taken up by the plant, and how soon after application the worker contacts the treated surface. Pesticides show a large range of variation in application rates, application timing, and environmental fate characteristics with the result that there are significant differences in the levels of dislodgeable residues on treated surfaces encountered by workers.

In identifying active ingredients for priority consideration by this pathway, EPA will rank pesticides on the basis of their potential for post-application exposure to agricultural workers. This group includes farmers and farm workers who reenter pesticide-treated fields and orchards to care for or harvest the crop. These agriculture transfer coefficients developed by the Agricultural Reentry Task Force (ARTF) clearly indicate that certain work activities in particular crops lead to higher levels of exposure than other post-application work activities (Ref. 12). For example, harvesting fruit in orchards or pruning vines in a grape vineyard requires extensive contact with plant foliage that is likely to contain pesticide residues. When the worker touches the foliage, a certain amount of the residue transfers to the worker's skin or clothing. The greater the contact is, the higher the residue transferred, and the higher the ensuing exposure.

EPA will review the ARTF's transfer coefficient studies to identify those work activities and crops which have the highest potential for post-application exposure. The ARTF is a consortium of pesticide companies that formed a joint venture to develop data for use in EPA assessments of worker risk. The ARTF conducted a series of carefully controlled studies that measured the amount of pesticide residue present on workers' clothing after a specific period of time working in a crop with known amounts of pesticide residue on the crop foliage. The ARTF set of data is very extensive, covering over 100 different crops—essentially all crops, including greenhouses and ornamental crops, in which workers might come into contact with pesticide-treated leaf surfaces. The studies permit the calculation of a standardized ''transfer coefficient'' for the crop and activity.[1] Activities having higher transfer coefficients should result in higher levels of worker exposure, all other factors being equal.

EPA will identify those work activities and specific crops and crop categories (e.g., tree fruit crops) having approximately the dozen highest transfer coefficients to identify the pesticides having the highest levels of use on those crops. EPA will then identify specific crops associated with the highest transfer coefficients to obtain information from the data sources described in this unit. Specifically, EPA will estimate the total number of acre treatments for each pesticide on all of the top crops and then array the pesticides on the basis of the highest totals.[2] The Agency will obtain information about the number of acre-treatments for each pesticide from a variety of public and private data sources including USDA's National Agriculture Statistics Service (NASS) and California's Department of Pesticide Regulation (CDPR).

The USDA's NASS has, for more than 10 years, conducted annual surveys of pesticide use in a large number of crops, surveying thousands of agricultural producers in any given year. NASS conducts their use survey every year for a set of row crops. NASS also surveys pesticide usage on other crops, alternating every year between a group of fruit and nut crops and a group of vegetable crops (i.e., selected fruits/nuts were surveyed in 1997, 1999, 2001; selected vegetables were surveyed in 1996, 1998, and 2000). NASS surveys States representing a majority of national production for a crop and reports a number of statistics for insecticide, fungicide, and herbicide use including: Percent crop treated, application rate, numbers of applications, acreage grown. Using these data, EPA can estimate the average acre-treatments for the pesticides used on crops with the highest transfer coefficients. More information on NASS pesticide use data can be found at *http://www.pestmanagement.info/nass*.

The State of California has reported annually on all agricultural pesticide usage in the State for almost 10 years. This data collection effort is managed by CDPR, and includes an extensive array of treatment information on crops including timing, location, area, and rate. These data allow EPA to calculate average pounds of pesticides applied for crops grown in California. In cases where crops with high transfer coefficients are grown in California, but not reported by NASS, CDPR data would be extremely useful. For those

[1] The transfer coefficient is calculated by dividing the amount of residue found on workers, expressed as milligrams (mg), by the amount of dislodgeable residue found on the crop foliage, expressed as mg per square centimeter (cm^2), and dividing this value by the length of time spent in the activity, expressed in hours (hr). The resulting coefficient for each activity is expressed as cm^2/hr and quantitatively reflects the extent to which the activity involves contact with pesticide-treated surfaces in a manner that dislodges the residues present on the surface.

[2] Acre-treatments are measured as the number of times an acre of crop may have been treated with a pesticide. For example, if two acres were each treated one time in a season, that would represent two acre-treatments. If a single acre were treated two times in a season, that would also represent two acre-treatments.

crops reported by both CDPR and NASS, data from both sources would serve to validate estimates. More information on CDPR pesticide usage data can be found at *http://www.cdpr.ca.gov/docs/pur/purmain.htm*.

EPA's third major source of pesticide use information is AgroTrak™, a product of Doane Marketing Research, Inc. (referred to here simply as Doane). Doane maintains a proprietary national database of agricultural pesticide use summarizing data from surveys of thousands of agricultural producers across a wide range of row and specialty crops. Doane has conducted an annual survey for more than 15 years, and among the statistics they publish for a given crop/chemical combination are acres grown, acres treated, and acre-treatments. Although the database is proprietary, these data represent an important source of data, and can be compared to NASS and CDPR data to fill data gaps, or serve as another point of validation. Doane's survey can be particularly useful because their national survey covers fruits and vegetables producers every year. More information on Doane can be found at *http://www.doanemr.com/row-specialty-turf/index.html*.

Basing its priorities for this pathway on the number of acre-treatments of crops with worker activities having high transfer coefficients should identify pesticides that have potential for relatively higher worker exposure. The combined criteria of crops with high transfer coefficients and pesticides used on such crops should identify those active ingredients with potential for high worker exposures. The use of the additional criterion of total acre-treatments should identify pesticides with the widest use, and thus the potential for exposures for the largest number of workers.

The criteria, however, would not account for any of the characteristics specific to the use of a particular pesticide on a crop that could decrease or increase the potential for exposure, such as application rate, application timing, and environmental fate characteristics. Consequently, the priority listing may not completely reflect where the highest post-application exposures exist.

Nevertheless, EPA believes that the approach described is a practicable approach for identifying those pesticide active ingredients with the potential for either widespread or high levels of exposure to post-application workers.

E. Integration of Pathway Priorities for Pesticide Active Ingredients

This unit addresses how EPA will integrate the information developed on priorities through the analysis of the four exposure pathways discussed Units VI.A. through VI.D. As its first step, the Agency will apply the criteria for each pathway to produce four lists of candidate chemicals for potential screening in the endocrine disruptor screening battery. EPA expects that a number of pesticide active ingredients will be identified for more than one pathway, and that some chemicals will appear only on the list for a single pathway. In choosing which active ingredients it will recommend for screening, EPA will give higher priority to chemicals that appear on multiple lists, with the substances appearing on four lists receiving the highest priority, followed by the group of chemicals appearing on three lists, followed by chemicals on only two lists. To the extent necessary to establish priorities within these four groups, EPA will give greater priority to chemicals which appear on the list for the food pathway (which generally involves the most widespread exposure of the four pathways), followed by the list for the occupational pathway (which generally involves the highest per capita levels of exposure of the different pathways).

EPA will review the candidate list to exclude the chemicals which are being used as ''positive controls'' to validate the screening assays. Also, in making selections for this exposure-based initial list, EPA does not plan to select substances it anticipates as having low potential to cause endocrine disruption (e.g., certain FIFRA List 4 inerts, most polymers with number average molecular weight greater than 1,000 daltons, strong mineral acids, and strong mineral bases), and considers these substances to be a low priority for early screening under the EDSP. EPA will also exclude any chemicals that are no longer used or produced in the United States.

VII. Approach for Selecting High Production Volume Pesticide Inerts

EPA will use several sets of criteria for identifying High Production Volume Pesticide Inerts (HPV/Inerts) that will be given priority for screening in the screening battery. In general, the Agency is using an approach for HPV/Inerts that is similar to that used for pesticide active ingredients. EPA will focus on several indicators of the potential for human exposure including production volume, specific pathways of exposure, and presence in human biological samples. While EPA's general focus is on HPV/Inerts with relatively greater potential human exposure, this focus does not necessarily mean that the list of chemicals produced will contain no substances which have potentially high levels of environmental exposure to ecological receptors. Many of the HPV/Inerts having greater potential for human exposure will also have greater potential for exposure to wildlife. For example, the databases to be reviewed for ecological biological monitoring data will directly identify certain chemicals to which aquatic organisms have been exposed (see Unit VII.B.). Similarly, several of the monitoring databases that will be reviewed for the drinking water pathway contain monitoring data collected on raw surface water (i.e., before the water enters a public water system) (see Unit VII.C.). Thus, these surface water monitoring data will show the levels of chemical to which fish, amphibians, and other aquatic species are exposed. Accordingly, EPA believes that the approach to evaluate HPV/Inerts, while focused on human exposure, will also capture HPV/Inerts with potentially widespread environmental exposures.

EPA generally has more extensive information available to assess potential exposure to pesticide active ingredients via food, water, occupational and residential exposure pathways than is available to assess exposure to HPV/Inerts. In addition, EPA generally has more extensive information available on usage (including both agricultural and residential) of active ingredients than is available for HPV/Inerts (including both pesticidal and non-pesticidal uses of those same substances). For these reasons, the specific data sources and pathways EPA has identified for selecting an initial set of HPV/Inerts for endocrine disruptor screening differs somewhat from those for selecting pesticide active ingredients.

First, EPA will review existing databases to identify chemicals that are both pesticide inerts and HPV chemicals. HPV chemicals are those chemicals manufactured or imported into the United States in amounts equal to or greater than one million pounds per year. The HPV chemicals are identified through information collected under the Toxic Substances Control Act's (TSCA) Inventory Update Rule (IUR). IUR provides for periodic updating of production volume and other information pertaining to selected Inventory chemicals currently in commerce. Second, EPA will review existing databases to identify HPV/Inerts that are present in four types of environmental media or monitoring

data: Human biological samples, ecological tissues that have human food uses (i.e., fish tissues), drinking water, and indoor air. Third, EPA will prioritize these chemicals based on the number of monitoring data types in which the chemicals have been detected. Thus, HPV/Inerts appearing in four types of monitoring data would be given higher priority than those appearing in only one type of monitoring data. To the extent it becomes necessary to establish priorities within these four types of monitoring data, EPA will give higher priority to those HPV/Inerts that appear in human biological monitoring data, followed by drinking water/indoor air monitoring data (weighted equally), followed by ecological biological data relevant to human exposure.

A. High Production Volume/Inerts in Human Biological Monitoring Data

EPA will review the following data sources to determine which HPV/Inerts have been detected in human biological samples and to identify HPV/Inerts for which there appears to be widespread human exposure, based on factors such as the number of samples and number of detections. The presence of a single or only a few detections of a HPV/Inert chemical typically would not be a sufficient basis for concluding that the chemical should be identified as having significant exposure.

1. *Third National Health and Nutrition Examination Survey*. The Third National Health and Nutrition Examination Survey (NHANES III) was conducted between 1988 and 1994 on 33,994 people. The survey was designed to obtain nationally representative information on the health and nutritional status of the U.S. population through interviews and direct physical examinations. Several studies (e.g., high blood pressure, immunization status, nutritional blood measures, etc.) were conducted under NHANES III. One study relevant to this priority-setting exercise is the Priority Toxicant Reference Range Study, previously referenced as Ashley et al (1994) (Ref. 13). This NHANES III article contains relevant human biomonitoring data for over 40 volatile organic compounds (VOCs). Standard QA/QC procedures such as sample duplicates and blanks were used in the NHANES III Study. The study participants in the special study are not statistically representative of the U.S. population.

2. *National Report on Human Exposure to Environmental Chemicals*. The National Report on Human Exposure for 2001 (Ref. 14) was a U.S. Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) report that provided exposure information about people participating in an ongoing national survey of the general U.S. population—the NHANES. This report provides information on concentrations of 27 environmental chemicals measured in blood and/or urine in the U.S. population. The most current 2003 Report (Ref. 15) presents exposure data for 116 chemicals (including the 27 chemicals presented in the 2001 Report) during NHANES 1999 and 2000. VOCs are not included in the 2003 Report. Chemicals and their metabolites were measured in blood, urine, and blood serum samples from selected NHANES participants. These chemicals include metals, organophosphate pesticide metabolites, phthalate metabolites, and cotinine, a marker of exposure to tobacco smoke. This report will be updated with additional biomonitoring data for these same or different chemicals on an annual basis.

3. *National Human Adipose Tissue Survey*. The EPA's Office of Pollution Prevention and Toxics (OPPT) operated the National Human Monitoring Program (NHMP) until the early 1990s. The NHMP's primary activity was conducting a National Human Adipose Tissue Survey (NHATS), which analyzed human adipose tissue specimens to monitor human exposure to potentially toxic chemicals. A nationwide network of pathologists and medical examiners from 47 standard metropolitan statistical areas (SMSAs) collected tissue specimens from cadavers and surgical patients that were then analyzed for certain chemicals. Throughout the 1970s and early 1980s, the chemical residues of primary interest were organochlorine pesticides and polychlorinated biphenyls (PCBs). In 1982, VOCs and semivolatile organic compounds (SVOCs) were included in the survey. NHATS contains relevant human biomonitoring data for over 150 chemicals. Quality control samples, such as method and equipment blank samples, control samples, and spike samples, were collected to evaluate the quality of sampling data. Data are available for years 1970 through 1987 in 13 journal articles and reports (Refs. 16–29). However, because a standard set of summarized data parameters has not been published, the NHATS data were previously compiled into a database by EPA, and this database was incorporated into the EDPSD (version 2). (See *http://www.epa.gov/scipoly/oscpendo/prioritysetting/database.htm*) In implementing its approach for selecting the initial list of chemicals for screening, EPA will consider chemicals contained in the database compiled for EDPSD and include those chemicals for which geometric means were calculated for EDSP priority-setting purposes.

4. *Total Exposure Assessment Methodology Study*. The Total Exposure Assessment Methodology (TEAM) Study was designed to develop methods to measure individual total exposure (exposure through air, food, and water) and resulting body burden of toxic and carcinogenic chemicals, and to apply these methods within a probability-based sampling framework to estimate the exposures and body burdens of urban populations in several U.S. cities. The TEAM Study reports the results of eight monitoring studies performed in five communities during different seasons of the year. Breath, personal air, outdoor air, and water samples were collected for 30 VOCs. (Refs. 30–32).

Established methods were used to collect and analyze TEAM Study data. Quality control and quality assurance samples collected and analyzed include reagent blanks, field blanks, duplicate samples, and spiked samples. Data were reported for water using units of measure different than those used for air and breath samples. Environmental and biological data are generally lognormally distributed; thus, the data's central tendency is generally best represented using a geometric mean. Geometric means are provided for all compounds that were measured in 50% or more of the samples. For most of the compounds that were measured in less than 50% of the samples, a minimum quantifiable limit that can be used for ranking the data was provided.

B. High Production Volume/Inerts in Ecological Biological Monitoring Data Relevant to Human Exposure

EPA will review the following data sources to determine which HPV/Inerts have been detected in non-human tissues potentially relevant to human ingestion exposure and to identify HPV/Inerts for which there appears to be widespread human exposure, based on factors such as the number of samples and number of detections. The presence of a single or only a few detections of a HPV/Inert chemical typically would not be a sufficient basis for concluding that the chemical should be identified as having significant exposure.

1. *National Sediment Inventory Fish Tissue Data (NSI Fish Tissue Data)*. This database is described in Unit VI.B.5. In implementing its approach for selecting the initial list of chemicals for screening, EPA will consider fish species tissues for samples collected

after 1989 in NSI for EDSP priority-setting purposes.

2. *National Fish Tissue Study*. EPA is conducting a screening-level study to estimate the national distribution of selected persistent, bioaccumulative and toxic chemical residues in fish tissue from lakes and reservoirs of the continental United States. This 4-year study, which was initiated in 2000, will define the national background levels for 265 chemicals in fish, establish a baseline to track the progress of pollution control activities, and identify areas where contaminant levels are high enough to warrant further investigation. The National Fish Tissue Study is the first survey of fish tissue to be based on a random sampling design. This sampling design will allow EPA to develop national estimates of the mean levels of persistent, bioaccumulative, and toxic chemicals in fish tissue. It will also provide data on the largest set of persistent, bioaccumulative and toxic chemicals ever studied in fish. More details can be found at *http://www.epa.gov/waterscience/fishstudy/results.htm*.

3. *National Water Quality Assessment Program Aquatic Animal Tissue Data*. This database, which also contains information on surface water and ground water monitoring studies, is described in Unit VI.B.8. The National Water Quality Assessment (NAWQA) has recently made aquatic organism tissue data available for a variety of species and tissues. EPA will consider NAWQA tissue data for all species and tissue types for the ecological biological monitoring exposure pathway.

C. High Production Volume/Inerts in Drinking Water Monitoring Data

EPA will review the following data sources to determine which HPV/Inerts have been detected in drinking water and in potential sources of drinking water and identify HPV/Inerts for which there appears to be widespread human exposure, based on factors such as the number of samples and number of detections. The presence of a single or only a few detections of a HPV/Inert chemical typically would not be a sufficient basis for concluding that the chemical should be identified as having significant exposure.

1. *National Contaminant Occurrence Data Base (NCOD Database)*. This database is described in Unit VI.B.6.

2. *National Human Exposure Assessment Survey*. EPA designed the National Human Exposure Assessment Survey (NHEXAS) program to address some of the limitations of single-chemical and single-media exposure route studies. The purpose of NHEXAS is to evaluate comprehensive human exposure to multiple chemicals from multiple routes on both a community and regional scale, as well as its association with environmental concentrations and personal activities. EPA completed Phase 1 field sample collection and laboratory analyses of NHEXAS in 1998. EPA used established methods to collect and analyze NHEXAS data. Quality control and quality assurance samples collected and analyzed include reagent blanks, field blanks, duplicate samples, and spiked samples. Samples were split and analyzed in multiple laboratories; when appropriate audit samples were available, they were also analyzed. Data are reported for different media using different units of measure and different measures of central tendency. For example, arsenic concentrations are reported in micrograms per kilogram (μg/Kg) for beverages and food and in micrograms per liter (μg/L) for water. Sometimes the central tendency value is reported as an arithmetic mean, sometimes as a median, and sometimes as a 90th percentile. (Refs. 33–36).

3. *Total Exposure Assessment Methodology Water Data (TEAM Water Data)*. This study is described in Unit VII.A.4.

4. *National Stream Quality Accounting Network (NASQAN) Data*. This database, which contains information on surface water monitoring studies, is described in Unit VI.B.7.

5. *National Water Quality Assessment Program (NAWQA)*. This database, which contains information on surface water and ground water monitoring studies, is described in Unit VI.B.8.

D. High Production Volume/Inerts in Indoor Air Monitoring Data

EPA will review the following data sources to determine which HPV/Inerts have been detected in residential indoor air and to identify HPV/Inerts for which there appears to be widespread human exposure, based on factors such as the number of samples and number of detections. The presence of a single or only a few detections of a HPV/Inert typically would not be a sufficient basis for concluding that the chemical should be identified as having significant exposure.

1. *Office of Research and Development published literature*. The following eight EPA/Office of Research and Development (ORD)-authored journal articles and reports provide indoor and personal air monitoring data: Brown et al. (1994), Daisey et al. (1994), Kelly et al. (1994), Immerman and Schaum. (1990), Samfield (1992), Shah et al. (1988), Sheldon et al. (1992), and Shields et al. (1996) (Refs. 37–44). In implementing its approach for selecting the initial list of chemicals for screening, EPA will exclude the Kelly et al. (1994) article, as this article only provides outdoor air data.

2. *National Human Exposure Assessment Survey*. The National Human Exposure Assessment Survey (NHEXAS) Program was designed to evaluate comprehensive human exposure via indoor and outdoor air to multiple chemicals on a community and regional scale. Samples were collected of both the indoor and outdoor air that people breathe. Preliminary results of Phase I of NHEXAS were reported in 15 journal articles published in 1999. Four of these 15 journal articles provided information that is applicable to indoor air monitoring (Refs. 34–36, 44). In implementing its approach for selecting the initial list of chemicals for screening, EPA will consider both NHEXAS indoor and/or personal air samples for EDSP priority-setting purposes.

3. *Total Exposure Assessment Methodology Study*. The Total Exposure Assessment Methodology (TEAM) Study is described in Unit VII.A.4. The ORD literature (see Unit VII.D.1.) includes all of the indoor air data collected in the TEAM Study; therefore, EPA will consider TEAM Study data in implementing its approach for selecting the initial list of chemicals along with the ORD data rather than as a separate source of information.

E. Integration of Pathway Priorities for High Production Volume/Inerts

This unit addresses how EPA will integrate the information developed on priorities through the analysis of the four types of exposure monitoring data discussed in Units VII.A. through VII.D. (human biological data, ecological biological data relevant to human exposure, drinking water data, and indoor air data). As its first step, the Agency will produce four lists of candidate chemicals, one for each type of monitoring data, for potential screening in the endocrine disruptor screening battery. EPA expects that a number of chemicals will be identified in more than one type of monitoring data and that some chemicals will appear only in a single type of monitoring data. In choosing which HPV/Inerts to propose for the initial screening list, EPA will give higher priority to chemicals that appear in multiple types of monitoring data, with the HPV/Inerts appearing in four types receiving the highest priority, three types the next highest priority, etc. To the extent it becomes necessary to

establish priorities within these four types of monitoring data, EPA will give greater priority to HPV/Inerts which appear in human biological monitoring data, followed by drinking water/indoor air monitoring data (weighted equally), followed by ecological biological monitoring data relevant to human exposure. EPA will also exclude any chemicals that are no longer produced or used in the United States.

EPA will review the candidate list to exclude the chemicals which are being used as ''positive controls'' to validate the screening assays. Also, in making selections for this exposure-based initial list, EPA does not plan to select substances it anticipates as having low potential to cause endocrine disruption (e.g., certain FIFRA List 4 inerts, most polymers with number average molecular weight greater than 1,000 daltons, strong mineral acids, and strong mineral bases), and considers these substances to be a low priority for early screening under the EDSP.

VIII. Integration of the Pesticide Active Ingredients and High Production Volume/Inerts Lists

EPA will use similar but somewhat different sets of criteria for identifying pesticide active ingredients and HPV/Inerts that should be given priority consideration for inclusion in the initial round of screening.

EPA will generate four lists of candidate pesticide active ingredients (one for each exposure pathway) and four lists of candidate HPV/Inerts (one for each type of exposure monitoring data). Because EPA generally has more extensive exposure information for pesticide active ingredients than for HPV/Inerts, the Agency does not think it would be appropriate to integrate the eight lists. Instead, EPA will separately select pesticide active ingredients and HPV/Inerts giving higher priority to pesticide active ingredients and HPV/Inerts that appear in multiple lists of exposure pathways and exposure monitoring data types, respectively. Thus, the selected pesticide active ingredients may be those that appear in three or more pathways whereas the selected HPV/Inerts may be those that appear in one or more pathways. Finally, EPA will review the lists for chemical class representation (e.g., as a tie breaker). EPA's intent is to select a total of 50 to 100 chemicals to initiate the screening program, but will not treat that overall target as a rigid quota. In addition, EPA may sponsor Tier 1 screening of some of the positive control chemicals used for validation of the assays, and other chemicals, to provide data for comparison purposes and to test the performance of the battery. This would be in addition to the 50 to 100 chemicals selected using the approach described in this notice.

IX. References

The following is a list of the documents that are specifically referenced in this notice. These references are available in the docket for this notice as described in Unit 1.B.1., under docket ID number OPPT–2004–0109. In addition, some documents referenced are only available in docket ID number OPPT–2002–0066, which is the docket used for the proposed approach. These dockets are linked in EDOCKET, but to simplify identifying the specific documents that can be found only in docket ID number OPPT–2002–0066, those references include the appropriate document ID number. (See Unit I.B.1. for information on how to access these dockets).

1. EPA. Endocrine Disruptor Screening and Testing Advisory Committee Final Report. August 1998. Available at: *http://www.epa.gov/scipoly/oscpendo/edspoverview/finalrpt.htm*. Document ID number OPPT–2002–0066–0003.

2. EPA, Science Advisory Board. Review of EPA's Proposed Environmental Endocrine Disruptor Screening Program. July 1999. EPA–SAB–EC–99–013. Available at: *http://www.epa.gov/science1/pdf/ec13.pdf*. Document ID number OPPT–2002–0066–0002.

3. EPA. Comment Response Document for Endocrine Disruptor Chemical Selection/Priority Setting. November 2004.

4. EPA. Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency. October 2002. EPA/260R-02-008. Available at: *http://www.epa.gov/quality/informationguidelines*.

5. EPA. Compilation of Data Source Summaries Prepared for High Production Volume (HPV) and Pesticide Inert Chemicals and Pesticide Active Ingredients Data Sources. EPA Contract 68W02024, Task Order #69. Eastern Research Group, Inc. June 2005.

6. USDA. Food Commodity Intake Database (FCID). July 2000. Available at: *http://www.barc.usda.gov/bhnrc/foodsurvey/fcid.html*.

7. EPA. EPA Pesticides in Ground Water Database, A Compilation of Monitoring Studies: 1971–1991 National Summary, EPA 734–12–92–001. September 1992. Document ID number OPPT–2002–0066–0005.

8. USGS. Pesticides in Select Water Supply Reservoirs and Finished Drinking Water, 1999–2000: Summary of Results from a Pilot Monitoring Program. 2001. USGS Open File Report 01–456. Document ID number OPPT–2002–0066–0006.

9. EPA. The Incorporation of Water Treatment Effects on Pesticide Removal and Transformation in Food Quality Protection Act Drinking Water Assessments. October 25, 2001. Available at: *http://www.epa.gov/pesticides/trac/science/water_treatment.pdf*. Document ID number OPPT–2002–0066–0007.

10. EPA. Estimating the Drinking Water Component of a Dietary Exposure Assessment. Revised November 2, 1999. Available at: *http://www.epa.gov/fedrgstr/EPA-PEST/1999/November/Day-10/6044.pdf*. Document ID number OPPT–2002–0066–0008.

11. EPA. EPA Background Paper for the FIFRA Scientific Advisory Panel Meeting on Monitoring Strategies for Pesticides in Surface–Derived Drinking Water. June 2000. Available at: *http://www.epa.gov/scipoly/sap/2000/june/drinkingwatersurvey.pdf*. Document ID number OPPT–2002–0066–0009.

12. EPA. Science Advisory Council on Exposure, Policy Number 003.1, Agricultural Transfer Coefficients. Document ID number OPPT–2002–0066–0010.

13. Ashley, David L.; Bonin, Michael A.; Cardinall, Frederick L.; McCraw, Joan M.; and Wootan, Joe V. Blood Concentrations of Volatile Organic Compounds (VOCs) in a Nonoccupationally Exposed U.S. Population and in Groups with Suspected Exposure. Clinical Chemistry (1994) 40: 1401–1404. Document ID number OPPT–2002–0066–0011.

14. HHS, CDC. National Report on Human Exposure to Environmental Chemicals. March 2001. Document ID number OPPT–2002–0066–0012.

15. HHS, CDC. Second National Report on Human Exposure to Environmental Chemicals. January 2003. Available at: *http://www.cdc.gov/exposurereport/2nd/pdf/secondner.pdf*.

16. EPA. Chlorinated Dioxins and Furans in the General U.S. Population: NHATS FY87 Results—Executive Summary. EPA–560/5–91–003. May 1991. Document ID number OPPT–2002–0066–0013.

17. Cramer, Paul H.; Stanley, John S.; Bauer, Karin; Ayling, Randy E.; Thornburg, Kelly R.; and Schwemberger, John. Brominated Dioxins and Furans in Human Adipose Tissue: Final Report. EPA–560/5–90–005 (NTIS PB91–103507). April 11,

1990. Document ID number OPPT–2002–0066–0014.

18. Cramer, Paul H.; Stanley, John S.; and Thornburg, Kelly R. Mass Spectral Confirmation of Chlorinated and Brominated Diphenylethers in Human Adipose Tissues: Final Report. EPA–560/5–90–012 (NTIS PB91–159699). June 15, 1990. Document ID number OPPT–2002–0066–0015.

19. Mack, Gregory A. and Mohadjer, Leyla. Baseline Estimates and Time Trends for Beta-benzene hexachloride, Hexachlorobenzene, and Polychlorinated Biphenyls in Human Adipose Tissue 1970–1983. EPA–560/5–85–025. September 30, 1985. Document ID number OPPT–2002–0066–0016.

20. Onstot, J.D.; Ayling, R.E.; and Stanley, J.S. Characterization of HRGC/MS Unidentified Peaks from the Analysis of Human Adipose Tissue: Volume I—Technical Approach. EPA–560/5–87–002A (NTIS PB88–100367). May 1987. Document ID number OPPT–2002–0066–0017.

21. Onstot, J.D.; Ayling, R.E.; and Stanley, J.S. Characterization of HRGC/MS Unidentified Peaks from the Analysis of Human Adipose Tissue: Volume II—Appendices. EPA–560/5–87–002B (NTIS PB88–100375). May 1987. Document ID number OPPT–2002–0066–0018.

22. Onstot, J.D. and Stanley, J.S. Identification of SARA Compounds in Adipose Tissue. EPA–260/5–89–003 (NTIS PB90–132564). August 1989. Document ID number OPPT–2002–0066–0019.

23. Orban, John E.; Stanley, John S.; Schwemberger, John G.; and Remmers, Janet C. Dioxins and Dibenzofurans in Adipose Tissue of the General US Population and Selected Subpopulations. *American Journal of Public Health*. 1994 84: 439–445. Document ID number OPPT–2002–0066–0020.

24. EPA. Semivolatile Organic Compounds in the General U.S. Population: NHATS FY86 Results—Volume I. EPA–747–R–94–001. July 1994. Document ID number OPPT–2002–0066–0021.

25. Stanley, John S. Broad Scan Analysis of the FY82 National Human Adipose Tissue Survey Specimens: Volume I—Executive Summary. EPA–560/5–86–035 (NTIS PB87–177218). December 1986. Document ID number OPPT–2002–0066–0022.

26. Stanley, John S. Broad Scan Analysis of the FY82 National Human Adipose Tissue Survey Specimens: Volume II—Volatile Organic Compounds. EPA–560/5–86–036 (NTIS PB87–177226). December 1986. Document ID number OPPT–2002–0066–0023.

27. Stanley, John S. Broad Scan Analysis of Human Adipose Tissue: Volume III—Semivolatile Organic Compounds: Final Report. EPA–560/5–86–037 (NTIS PB87–180519). December 1986. Document ID number OPPT–2002–0066–0024.

28. Stanley, John S. Broad Scan Analysis of Human Adipose Tissue: Volume IV—Polychlorinated Dibenzo-p-Dioxins (PCDDs) and Polychlorinated Dibenzofurans (PCDFs): Final Report. EPA–560/5–86–038 (NTIS PB87–177234). December 1986. Document ID number OPPT–2002–0066–0025.

29. Stanley, John S. and Stockton, Rodney A. Broad Scan Analysis of the FY82 National Human Adipose Tissue Survey Specimens: Volume V—Trace Elements. EPA–560/5–86–039 (NTIS PB87–180527). December 1986. Document ID number OPPT–2002–0066–0026.

30. EPA. The Total Exposure Assessment Methodology (TEAM) Study: Elizabeth and Bayonne, New Jersey, Devils Lake, North Dakota, and Greensboro, North Carolina: Volume II. Part 2. EPA–600/6–87/002b (NTIS PB88–100078). June 1987. Document ID number OPPT–2002–0066–0027.

31. EPA. The Total Exposure Assessment Methodology (TEAM) Study: Selected Communities in Northern and Southern California: Volume III. EPA–600/6–87/002c (NTIS PB88–100086). June 1987. Document ID number OPPT–2002–0066–0028.

32. Wallace, Lance. Project Summary: The Total Exposure Assessment Methodology (TEAM) Study. EPA/600/S6–87/002. September 1987. Document ID number OPPT–2002–0066–0029.

33. Thomas, Kent W.; Pelizzari, Edo D.; and Berry, Maurice R. Population-based dietary intakes and tap water concentrations for selected elements in EPA Region V National Human Exposure Assessment Survey (NHEXAS).*Journal of Exposure and Environmental Epidemiology*. 1999. 9: 402–413. Document ID number OPPT–2002–0066–0030.

34. Clayton, C.A.; Pellizzari, E.D.; Whitmore, R.W.; Perritt, R.L.; and J.J. Quackenboss. National Human Exposure Assessment Survey (NHEXAS): distributions and associations of lead, arsenic and volatile organic compounds in EPA Region 5. *Journal of Exposure and Environmental Epidemiology*. 1999. 9: 381–392. Document ID number OPPT–2002–0066–0031.

35. O'Rourke, Mary Kay; Van de Water, Peter K.; Jin, Shan; Rogan, Seumas P.; Weiss, Aaron D.; Gordon, Sydney M.; Moschandreas, Demetrios M.; and Lebowitz, Michael D. Evaluations of primary metals from NHEXAS Arizona: distributions and preliminary exposures. *Journal of Exposure Analysis and Environmental Epidemiology*. 1999. 9: 435–445. Document ID number OPPT–2002–0066–0032.

36. Robertson, Gary L.; Lebowitz, Michael D.; O'Rourke, Mary Kay; Gordon, Sydney; and Moschandreas, Demetrios. The National Human Exposure Assessment Survey (NHEXAS) study in Arizona—introduction and preliminary results. *Journal of Exposure Analysis and Environmental Epidemiology*. (1999) 9: 427–434. Document ID number OPPT–2002–0066–0033.

37. Brown, S.K.; Sim, M.R.; Abramson, M.J.; and Gray, C.N. Concentrations of Volatile Organic Compounds in Indoor Air—A Review. *Indoor Air*. 1994. 4: 123–134. Document ID number OPPT–2002–0066–0034.

38. Daisey, J.M.; Hodgson, A.T.; Fisk, W.J.; Mendell, M.J.; and Brinke, J. Ten. Volatile Organic Compounds In Twelve California Office Buildings: Classes, Concentrations and Sources. *Atmospheric Environment*. 1994. 28: 3557–3562. Document ID number OPPT–2002–0066–0035.

39. Kelly, Thomas J.; Mukund, R.; Spicer, Chester W.; and Pollack, Albert J. Concentrations and Transformations of Hazardous Air Pollutants. *Environmental Science and Technology*. 1994. 28: 378A–387A. Document ID number OPPT–2002–0066–0036.

40. Immerman, Frederick W. and Schaum, John L. Final Report of the Nonoccupational Pesticide Exposure Study (NOPES). EPA/600/3–90/003 (NTIS PB90–152224). January 1990. Document ID number OPPT–2002–0066–0037.

41. Samfield, Max M. Indoor Air Quality Data Base for Organic Compounds. EPA–600–R–92–025 (NTIS PB92–158468). February 1992. Document ID number OPPT–2002–0066–0038.

42. Shah, Jitendra J. and Singh, Hanwant B. Distribution of Volatile Organic Chemicals in Outdoor and Indoor Air. A National VOCs Data Base. *Environmental Science and Technology*. 1988. 22: 1381–1388. Document ID number OPPT–2002–0066–0039.

43. Sheldon, L.; Clayton, A.; Jones, B.; Keever, J.; Perritt, R.; Smith, D.; Whitaker, D.; and Whitmore, R. Indoor Pollutant Concentrations and Exposures: Final Report. California Air Resources Board, Contract A833–156. January 1992. Document ID number OPPT–2002–0066–0040.

44. Shields, Helen C.; Fleischer, Daniel M.; and Weschler, Charles J. Comparisons among VOCs Measured in Three Types of U.S. Commercial Buildings with Different Occupant Densities. *Indoor Air*. 1996. 6: 2–17. Document ID number OPPT–2002–0066–0041.

45. Gordon, Sydney M.; Callahan, Patrick J.; Nishioka, Marcia G.; Brinkman, Marielle C.; O'Rourke, Mary Kay; Lebowitz, Michael D.; and Moschandreas, Demetrios. Residential Environmental Measurements in the National Human Exposure Assessment Survey (NHEXAS) Pilot Study in Arizona: Preliminary Results for Pesticides and VOCs. *Journal of Exposure Analysis and Environmental Epidemiology*. 1999. 9: 456–470. Document ID number OPPT–2002–0066–0042.

X. Statutory and Executive Order Reviews

This notice describes the approach that EPA intends to use to identify the first 50 to 100 chemicals to be screened under the EDSP. It represents a statement of Agency policy in this respect, but does not impose any requirements. As a policy statement related to a new program and the potential for novel policy issues to arise during this initial implementation of the statutory mandate in section 408(p) of FFDCA, the Office of Management and Budget (OMB) has designated this notice as ''significant'' under section 3(f) of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). The Agency therefore submitted this notice to OMB for review under this Executive order, and any changes made in response to recommendations or comments received from OMB during that review have been documented in the public docket as required by the Executive order.

Since this notice is not a regulation and does not otherwise impose any requirements, it does not qualify as an economically significant action under section 3(f)(1) of Executive Order 12866. As such, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), or Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). Nor does this notice contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

Since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply.

For the same reason, this action will not have substantial direct effects on State or tribal governments, on the relationship between the Federal Government and States or Indian tribes, or on the distribution of power and responsibilities between the Federal Government and States or Indian tribes. As a result, this action does not require any action under Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), or under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Nor does it impose any enforceable duty or contain any unfunded mandate or otherwise require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does this action require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

In addition, although not a final action that requires action under the Congressional Review Act, 5 U.S.C. 801 *et seq.*, which generally provides that before a final action may take effect, the issuing Agency must submit a report to each House of the Congress and the Comptroller General of the United States, EPA has submitted a courtesy copy of this notice to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to its publication in the **Federal Register**.

List of Subjects

Environmental protection, Chemicals, Endocrine disruptors, Pesticides and pests.

Dated: August 8, 2005.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–19260 Filed 9–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7975–3]

New Hampshire Sanitation Device Standard; Notice of Determination

This Notice of Determination is for all New Hampshire coastal waters.

On July 8, 2005 notice was published that the State of New Hampshire had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for all coastal waters of New Hampshire. The petition was filed pursuant to section 312(f)(3) of Public Law 92–500, as amended by Public laws 95–217 and 100–4, for the purpose of declaring these waters a ''No Discharge Area'' (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to me by the State of New Hampshire certified that there are six disposal facilities available to service vessels operating in the coastal waters of New Hampshire. A list of the facilities, phone numbers, locations, and hours of operation is appended at the end of the determination.

Based on the examination of the petition and its supporting information, which included site visits by EPA New England staff, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination.

The area covered under this determination is:

Waterbody/general area	Latitude	Longitude
Open Ocean—southern	42°51′26.81241″	−70°44′50.43790″
Open Ocean—south of Isles of Shoals	42°54′54.69793″	−70°37′48.0360″
Open Ocean—east of Isles of Shoals	42°57′24.92153″	−70°32′6.08357″
Open Ocean—northern	43°0′40.06352″	−70°39′39.85119″
Open Ocean—center	42°57′13.00278″	−70°41′42.94551″
Hampton Falls River	42°54′39.99647″	−70°51′49.17592″
Great Bay—Squamscott River	42°58′55.12418″	−70°56′45.02511″
Great Bay—Lamprey River	43°4′53.81971″	−70°56′4.65330″
Little Bay—Oyster River	43°7′51.91065″	−70°55′4. −70649″
Cocheco River	43°11′42.30454″	−70°52′21.96791″
Salmon Falls River	43°13′36.97946″	−70°48′40.68515″

This determination is made pursuant to section 312 (f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4.

EPA has prepared a response to the one written comment it received during the 45-day comment period, and it may be requested from EPA by writing to: Ann Rodney, U.S. EPA New England, 1 Congress Street, Suite 1100, COP, Boston, MA 2114–2023.

MARINAS WITH PUMPOUT STATIONS

Marina name	Town	Waterbody	Phone number and VHF number	Contact	Operating hours
George's Marina	Dover	Cocheco River	(603) 742–9089	George Maglaras.	8:30 a.m.–5:00 p.m. (weekdays); 8:30 a.m.–6:00 p.m. (Saturday); 9:00 a.m.–4:00 p.m. (Sunday).
Little Bay Boating Club	Dover	Little Bay	(603) 749–9282 VHF: 9, 16	Ed Rosholt	Call marina.
Great Bay Marine	Newington	Little Bay	(603) 436–5299 VHF: 9, 68	Ellen Saas/ Tom Brown.	24 hours (May through October).
Wentworth by the Sea Marina.	New Castle	Little Harbor	(603) 433–5050 VHF: 9, 68, 71.	Pat Kelley	8:00 a.m.–8:00 p.m. (weekdays); 7:00 a.m. 8:00 p.m. (weekends).
Hampton River Marina	Hampton	Hampton Harbor	(603) 929–1422 VHF:10, 16.	Len Russell	Call marina.
DES Mobile Pumpout Boat	Portsmouth	All coastal	(603) 436–0915 VHF: 9	Steve Root/ Ken Anderson.	Call for an appointment.

Dated: September 20, 2005.

Ira Leighton,

Acting Regional Administrator, Region 1.

[FR Doc. 05–19252 Filed 9–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7975–4]

Public Water System Supervision Program Revision for the State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Tennessee is revising its approved Public Water System Supervision Program. Tennessee has adopted drinking water regulations for the Long Term 1 Surface Water Treatment Rule and the Arsenic Rule. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends on approving this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by October 27, 2005 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by October 27, 2005, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on October 27, 2005. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Tennessee Department of Environment and Conservation, Division of Water Supply, 401 Church Street, 6th Floor, L&C Tower, Nashville, Tennessee 37219–5404 or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Amy Newbold, EPA Region 4, Drinking Water Section at the Atlanta address given above or at telephone (404) 562–9482.

Authority: Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142.

Dated: September 14, 2005.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 05–19261 Filed 9–26–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

September 21, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 27, 2005. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Leslie F. Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.* If you would like to obtain or view a copy of this new or revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Leslie F. Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0874.

Title: Consumer Complaint Form/ Obscene, Profane, and Indecent Complaint Form, FCC Forms 475 and 475B.

Form Number: FCC Form 475 and Form 475B.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 1,354,619: FCC Form 475—83,287; FCC Form 475B—1,271,332.

Estimated Time per Response: FCC Form 475—30 minutes; FCC Form 475B—15 minutes.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 359,477: FCC Form 475—41,644 hours; FCC Form 475B—317,833 hours.

Total Annual Cost: None.

Needs and Uses: Revised FCC Form 475, Consumer Complaint Form, allows the Commission to collect detailed data from consumers of the practices of common carriers. This information contained in the collection will allow consumers to provide the Commission with the relevant information required to help consumers develop a concise statement outlining the issues in dispute and revisions were made to also minimize the need to call back consumers in order to acquire further data. The Commission uses the information to assist in resolving informal complaints and the collected data required to assess the practices of common carriers and as a part of investigative work performed by federal and state law enforcement agencies to monitor carrier practices and promote compliance with federal and state requirements. The data may ultimately become the foundation for enforcement actions and/or rulemaking proceedings, as appropriate.

We have revised FCC Form 475 to clarify information requirements and comply with OMB requests to make the form less confusing and more user friendly, by making it clear for which complaints revised Form 475 may be used. Form 475 has also been made more consumer-friendly by putting directions for use in colored text at the top of the form to emphasize which types of complaints may be filed using the revised Form 475. Revised Form 475 will be used for all telephone-related complaints, except slamming. Certain fields have an asterisk next to them if the information is required in order to submit a complaint. It is also clearly stated now for which complaints Form 475 may be used and clearly states that ''slamming'' complaints may not be filed using the revised Form 475. Letters and numbers have been added to the individual data requests to make it easier for consumers to fill out the revised FCC Form 475.

In Form 475, the Commission asks for the complainant's contact information in the first ten fields, including, name/ company name, address, telephone number and e-mail address. Form 475 also asks the consumer briefly to describe their complaints including the company(ies) involved, the account numbers, telephone numbers associated with the complaint, types of service involved, important dates, and the resolution the consumer is seeking. Revised Form 475 will also provide clearer guidance for persons wishing to file Telephone Consumer Protection Act (TCPA) related complaints (*e.g.*, unwanted telemarketing calls, unsolicited faxes, etc.). Revised Form 475 now has a section for consumers to submit TCPA complaints with the Commission. This section includes five fields or questions where consumers will provide the requested information or respond to the question to file a TCPA violation with the Commission.

Proposed FCC Form 475B, Obscene, Profane, and Indecent Complaint Form, will enable the Commission to collect detailed data from consumers on the practices of those entities that may air/ broadcast obscene, profane and indecent programming by giving consumers an opportunity, for the first time, to use a specific form to delineate the consumer's complaint. Form 475B will be used only for complaints associated with obscene, profane, and/or indecent programming. Information contained in the collection will allow consumers to provide the Commission with the relevant information to help consumers develop a concise statement outlining the issues in dispute thereby minimizing the amount of time it takes to file a complaint, minimizing confusion on what information the Commission requires, and improving the complaint process and the overall quality of the complaints received.

Prior to the creation of Form 475B, consumers have attempted to use Form 475 to submit complaints about programming and in most such instances the Commission has been unable to process the complaints because not enough information was

included, *e.g.*, information pertaining to the date, time, and content of the program, the name of the station or program that is the subject of the complaint. FCC Form 475B will include fields that will ask for the complainant's contact information, including name, address, e-mail address, and telephone number. Form 475B will also include a section that asks for information to help identify the station that aired the alleged indecent, profane, and/or indecent material, including the network's name, name of the station, name of the particular program including host or personality/DJ, time of the program, the time zone, the date of the program and the community where the material was aired. The last section on Form 475B asks the complainant to describe the incident and to include as much detail as possible about specific words, languages, and images, to help the Commission determine whether the program was, in fact, obscene, profane, or indecent. The data may ultimately become the foundation for enforcement actions and/or rulemaking proceedings, as appropriate. The information will strengthen the effectiveness of the Commission's rules in deterring obscene, profane, and indecent content and programming.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–19251 Filed 9–26–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 11, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. William Schwing Patout, III, Franklin, Louisiana; Robert Bernadas Patout and Judith Hill Patout, both of Jeanerette, Louisiana; and Rivers Martin Patout, Jeanerette, Louisiana; to acquire additional voting shares of Jeanerette First National Bancorp, Inc., Jeanerette, Louisiana, and thereby indirectly acquire additional voting shares of The First National Bank of Jeanerette, Jeanerette, Louisiana.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Enoch Andrus Ludlow, Provo, Utah; to acquire additional voting shares of Far West Bancorporation, Provo, Utah, and thereby indirectly acquire additional voting shares of Far West Bank, Provo, Utah.

Board of Governors of the Federal Reserve System, September 21, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–19215 Filed 9–26–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 05-18695) published on page 55131 of the issue for Tuesday, September 20, 2005.

Under the Federal Reserve Bank of Cleveland heading, the entry below for PNC Financial Services Group, Inc., Pittsburgh, Pennsylvania, has been withdrawn.

A. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. The PNC Financial Services Group, Inc., Pittsburgh, Pennsylvania; to acquire HW Holdings, Richmond, Virginia, and thereby indirectly acquire Harris Williams & Co., and Harris Williams Advisors, Inc., and engage in broker dealer activities and advising clients on merger and acquisition matters, pursuant to sections 225.28(b)(6)(iii) and (b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, September 22, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–19286 Filed 9–26–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, October 3, 2005.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, September 23, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–19401 Filed 9–23–05; 2:34 pm]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) is seeking public comments on its proposal to extend through November 30, 2008, the current Paperwork Reduction Act (''PRA'') clearance for information collection

requirements contained in its regulations under the Fair Packaging and Labeling Act, 15 U.S.C. 1451–1461 (''FPLA''). That clearance expires on November 30, 2005.

DATES: Comments must be filed by November 28, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''FPLA Regulations: FTC File No. P868423'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Room H 135 (Annex J), 600 Pennsylvania Ave., NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: <*paperworkcomment@ftc.gov*>. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC website, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Stephen Ecklund, Investigator, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2841.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein. 44 U.S.C. 3506(c)(2)(A).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before November 28, 2005.

The FPLA was enacted to eliminate consumer deception concerning product size representations and package content information. The regulations that implement the FPLA, 16 CFR Parts 500–503, establish requirements for the manner and form of labeling applicable to manufacturers, packagers, and distributors of ''consumer commodities.'' [2] Section 4 of the FPLA specifically requires packages or labels to be marked with: (1) A statement of identity; (2) a net quantity of contents disclosure; and (3) the name and place of business of a company that is responsible for the product.

Estimated annual hours burden: 6,533,970 total burden hours (solely relating to disclosure [3]).

Staff conservatively estimates that approximately 653,397 manufacturers, packagers, distributors, and retailers of consumer commodities make disclosures at an average burden of ten hours per entity, for a total disclosure burden of 6,533,970 hours. As in the past, Commission staff has used census data to estimate the number of companies. Based on a revised approach to the commodity categories in the Retail Trade census data, staff has eliminated much of the overlapping redundancies and lowered the estimate of the number of retailers that sell products subject to the Commission's FPLA regulations.

Estimated annual cost burden: $114,997,872 (solely relating to labor costs).

The estimated annual labor cost burden associated with the FPLA disclosure requirements consists of an estimated hour of managerial and/or professional time per covered entity (at an estimated average hourly rate of $50) and nine hours of clerical time per covered entity (at an estimated average hourly rate of $14), for a total of $114,997,872 ($176 per covered entity x 653,397 entities).

Total capital and start-up costs are *de minimis*. For many years, the packaging and labeling activities that require capital and start-up costs have been performed by covered entities in the ordinary course of business independent of the FPLA and implementing regulations. Similarly, firms provide in the ordinary course of business the information that the statute and regulations require be placed on packages and labels.

William Blumenthal,

General Counsel.

[FR Doc. 05–19273 Filed 9–26–05; 8:45 am]

BILLING CODE 6750–01–P

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] ''Consumer commodity'' means any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.'' 16 CFR 500.2(c). For the precise scope of the term's coverage see 16 CFR 500.2(c); 503.2; 503.5. See also *http://www.ftc.gov/os/statutes/fpla/outline.html.*

[3] To the extent that the FPLA-implementing regulations require sellers of consumer commodities to keep records that substantiate ''cents off,'' ''introductory offer,'' and/or ''economy size'' claims, staff believes that most, if not all, of the records that sellers maintain would be kept in the ordinary course of business, regardless of the legal mandates.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New]

Emergency Clearance: Public Information Collection Requirements

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Emergency Clearance;

Title of Information Collection: Critical Infrastructure Data System (CIDS);

Form/OMB No.: OS–0990–New;

Use: Via an online data system, the Health and Human Service will collect, compile, and analyze information from a variety of health services' facilities regarding working facilities, needed critical assets, and diseases surveyed. No current national data system exists.

Frequency: Recording, Reporting, daily;

Affected Public: Federal, State, local, or tribal governments, business or other for profit, not for profit institutions;

Annual Number of Respondents: 3,385;

Total Annual Responses: 1,235,525;

Average Burden Per Response: 18 hours;

Total Annual Hours: 10,296;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–New), Fax Number (202) 690–8715, Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: September 19, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–19216 Filed 9–26–05; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice of a decision to designate a class of employees at the Y–12 facility, in Oak Ridge, Tennessee as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On August 25, 2005, the Secretary of HHS designated the following class of employees as an addition to the SEC:

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who worked in uranium enrichment operations or other radiological activities at the Y–12 facility in Oak Ridge, Tennessee from March 1943 through December 1947 and who were employed for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days of employment occurring within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC.

This designation will become effective on September 24, 2005, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: September 20, 2005.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 05–19224 Filed 9–26–05; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice of a decision to designate a class of employees at the Iowa Army Ammunition Plant, in Burlington, Iowa as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On August 25, 2005, the Secretary of HHS designated the following class of employees as an addition to the SEC:

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who worked as radiographers from May 1948 to March 1949 in support of Line 1 operations at the Iowa Army Ammunition Plant and who were employed for a number of work days aggregating at least 250 work days, occurring under this employment in combination with work days of employment occurring within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC.

This designation will become effective on September 24, 2005, unless Congress provides otherwise prior to the effective date. After this effective date,

HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: September 20, 2005.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 05–19225 Filed 9–26–05; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: ACF–196 State Temporary Assistance for Needy Families Financial Report.

OMB No.: 0970–0247.

Description: This information collection is authorized under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). The request is for renewal of approval to use the Administration for Children and Families (ACF) 196 form for periodic financial reporting under the Temporary Assistance for Needy Families (TANF) program. Current approval expires on September 30, 2005.

States participating in the TANF program are required by statute to report financial data on a quarterly basis. This form meets the legal standard and provides essential data on the use of Federal funds. Failure to collect the data would seriously compromise ACF's ability to monitor program expenditures, estimate funding needs and prepare budget submissions required by Congress. Financial reporting under the TANF program is governed by 45 CFR Part 265.

Respondents: State TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196	54	4	8	1,728

Estimated Total Annual Burden Hours: 1,728.

Additional Information: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 20, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–19271 Filed 9–26–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

International Conference on Harmonisation Workshop on Oncolytic Viruses; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled ''ICH Workshop on Oncolytic Viruses.'' The workshop will be held in conjunction with the International Conference on Harmonisation (ICH) expert working group and steering committee meetings in Chicago, IL. The objective of the workshop is to identify and discuss issues relevant to clinical development of oncolytic viruses including safety. The following viruses will be covered: Adenovirus, herpes simplex virus, reovirus, Newcastle disease virus, measles virus, and Sendai virus. Speakers will address selectivity, attenuation modes, shedding, clinical and viral safety, and proof of concept in support of the approach in animal and human setting.

Date and Time: The workshop will be held on November 7, 2005, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Westin Michigan Avenue, 909 North Michigan Ave., Chicago, IL 60611.

Contact Person: Daniel Takefman, Center for Biologics Evaluation and Research (HFM–720), Food and Drug Administration, Rockville, MD 20852, 301–827–5102, e-mail: *daniel.takefman@fda.hhs.gov*.

Registration: Registrations are being collected by the Pharmaceutical Research and Manufacturers of America (PhRMA). Send registration information (including name, title, firm name, address, telephone, and fax number) to Liz Cross at PhRMA by FAX: 202–572–7797, or e-mail: *lcross@phrma.org*, no later than Friday, October 14, 2005. The registration fee for this workshop is $450 for industry; $175 for academia and government participants. To register via the Internet go to *http://*

www.ich.org/cache/html/2238-272-1.html.

The registration fee will be used to offset some expenses of hosting the workshop including speakers, meeting rooms, coffee breaks, and materials.

If you need special accommodations due to a disability, please contact Liz Cross at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: ICH was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in the European Union (EU), Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

ICH's steering committee recognized that in the rapidly evolving area of gene therapy medicinal products, there is a need to continue to foster the exchange of information that may impact the regulation of such products. The Gene Therapy Discussion Group (GTDG) is leading these activities within ICH.

Regulatory and industry representatives from the three ICH regions (EU, Japan, and the United States), and experts from the European Free Trade Association, Health Canada, and the World Health Organization participate in this group.

The objectives of GTDG are to monitor emerging scientific issues and proactively set out principles that may have a beneficial impact on harmonizing regulation of gene therapy products.

The current ICH process and structure can be found on the Internet at *http://www.ich.org* (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**).

The agenda and registration form for the public workshop are available on the Internet at *http://www.ich.org/cache/html/2238-272-1.html* (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**).

The workshop agenda includes panel discussions in addition to invited presentations. A summary of the workshop will be available through ICH after the meeting.

Dated: September 20, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–19195 Filed 9–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 25 and 26, 2005, from 8:30 a.m. to 5 p.m.

Location: Food and Drug Administration, Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Igor Cerny, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: *cerny@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572) in the Washington, DC area), code 3014512539. Please call the Information Line for up-to-date information on this meeting. The background material will become available no later than the day before the meeting and will be posted on FDA's Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm* under the heading ''Advisory Committee for Pharmaceutical Science (ACPS).'' (Click on the year 2005 and scroll down to ACPS meetings.)

Agenda: On October 25, 2005, the committee will do the following: (1) Receive an update on current activities of the Parametric Tolerance Interval Test Workgroup; (2) receive and discuss presentations from the Pharmaceutical Research and Manufacturing Association, the Generic Pharmaceutical Association, and the U.S. Pharmacopeia pertaining to their perspectives on the general topic of Quality-By-Design (QBD) and drug release or dissolution specification setting; and (3) discuss and provide comments on the updated tactical plan under development for the establishment of drug release or dissolution specifications. On October 26, 2005, the committee will do the following: (1) Discuss and provide comments on the general QBD topics of question-based review and alcohol-induced dose dumping and (2) receive and discuss an update on the establishment of a workgroup for the review and assessment of Office of Pharmaceutical Science research programs. Following those items, an awareness topic will be introduced concerning the need to enhance the pharmaceutical education system in the United States.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 17, 2005. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon on October 25, 2005, and between approximately 1 p.m. and 2 p.m. on October 26, 2005. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 17, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Igor Cerny at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 19, 2005.

Scott Gottlieb,

Deputy Commissioner for Policy.

[FR Doc. 05–19193 Filed 9–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health/National Institute of Environmental Health Sciences; Submission for OMB Review; Comment Request; Active Living by Design Program Evaluation

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Environmental Health Sciences (NIEHS), the National Institute of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 14, 2005 (Volume 70, Number 29, Pages 7508–7509, and allowed 60–days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to the collection of information unless it displays a currently valid OMB control number.

Proposed Collection: *Title:* Active Living by Design Program Evaluation. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The purpose of this study is to provide NIEHS with an overall evaluation of the Active Living by Design (ALbD) program to determine the extent to which program strategies to increase physical activity influence change, as measured by increased physical activity and reduction of Body Mass Index (BMI), in residents of participating communities. The objective of this study is to determine the degree to which the changes in the built environment, communication strategies and policy as a result of ALbD's program has impacted physical activity and BMI in residents within the twenty-five (25) participating communities relative to a set of ten (10) control communities.

Two types of data collection will occur throughout the study. A telephone survey, which relies on self-reports, and a clinical survey, which will collect physical activity data using measures of physical activity such as, accelerometers; measures of BMI and an interview on respondents' perceptions of their neighborhood. The findings of this study will provide valuable information concerning (1) The Impact ALbD strategies have on increasing physical activity and bringing about positive changes in health associated with exercise, such as weight loss; and (2) possible reduction of health risks and diseases related to physical inactivity through implementation of ALbd strategies. *Frequency of Response:* Three times over a period of five (5) years, during three rounds of data collection. *Affected Public:* Individuals or households. *Type of Respondents:* Respondents includes adults and children ages 13 through 17 years and their parents. The clinical procedures require respondents under 18 years of age to be accompanied by their parent/guardian, therefore the burden has been doubled for these respondents. The annual reporting burden is respected in the following table:

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Respondents to Telephone Survey	2,450	1	.334	818.3
Respondents to Clinical Study—Adults	1,855	1	.9185	1,703.8
Respondents to Clinical Study—Children/Parent	595	1	1.837	1,093.0
Total				3,615.1

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request For Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments To OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Shobha Srinivasan, Ph.D., Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–21, 111 T.W. Alexander Drive, RTP, NC 27709. Phone: (919) 541–2506. Fax: (919) 316–4606. E-mail: *ss688k@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: September 15, 2005.

Richard A. Freed,

NIEHS, Associate Director for Management.

[FR Doc. 05–19175 Filed 9–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage

for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Introducing Homologous Recombination in a Wide Variety of Bacteria Using Plasmids and Prophage

Donald L. Court (NCI).

U.S. Provisional Application No. 60/573,504 filed 21 May 2004 (HHS Reference No. E–207–2004/0–US–01; U.S. Provisional Application No. 60/653,259 filed 14 Feb 2005 (HHS Reference No. E–207–2004/1–US–01); U.S. Provisional Application No. 60/655,729 filed 22 Feb 2005 (HHS Reference No. E–207–2004/2–US–01); U.S. Patent Application filed 20 May 2005 (HHS Reference No. E–207–2004/3–US–01).

Licensing Contact: Norbert Pontzer; 301/435–5502; *pontzern@mail.nih.gov.*

Homologous recombination is the process of exchanging DNA between two DNA molecules through regions of identical sequence. Homologous recombination provides an alternative to using restriction endonucleases and ligases for producing recombinant DNA. Although the background level of homologous recombination in native *E. coli* is very low even with long homology arms, it is possible to modify or clone nucleic acids using homologous recombination in specific genetically modified strains of *E. coli.* Whereas, a defective prophage used in these recombineering strains is optimally suited for expression of the lambda RED functions for homologous recombination it is hard for experimenters not familiar with *E. coli* genetics to move the defective prophage from strain to strain. Thus, methods of introducing the defective prophage and its recombineering functions into other strains of *E. coli* and other bacteria, including other gram negative bacteria, are also needed.

This invention provides plasmids and methods of use that confer the recombineering function to a variety of cells, including strains like DH10B of *E. coli*, as well as other species like *Salmonella, Pseudomonas, Cyanobacteria, and Yeresinia*, among others. These plasmids can be isolated in vitro and can be used to transform bacterial cells, such as gram negative bacteria.

This research is described, in part, in: Thomason, L.C., Costantino, N., Sawitzke, JA., Datta, S., Bubunenko, M., Court, DL., Myers, R.S., Oppenheim, AB. 2005. Recombineering in Prokaryotes. In Phages: Their Role in Bacterial Pathogenesis and Biotechnology. pp. 383–399. (MK. Waldor, DI. Friedman, and SL. Adhya) ASM Press, Herndon, VA.

Also provided are Lambda phages and methods of use for their introduction as prophages to provide recombineering functions into *E. coli* cells (Virology 319: 185–189, 2004). These phages include appropriate amber mutations in genes to prevent cell death and allow high expression of lambda RED recombination functions. The phage also carry a selectable drug marker used to make lysogens. The phages can be used to infect an *E. coli* cell that includes a suppressor of the amber mutations which allows the phage to reproduce, lyse the infected cell, and produce high titers of the phage. However, the phage will not be able to destroy cells that do not carry the suppressor mutations and in these cells the phage can lysogenise and be used as a defective prophage to generate recombination activity in those cells. Such cells lacking the suppressor are DH10B cells in which genomic libraries of BACs are cloned. Such random libraries can be lysogenized in mass (or individually) with these phages by selecting for the drug marker they carry. These lysogens can then be manipulated for homologous recombination in the same way as BAC containing derivatives off DY380 described elsewhere.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Regulation of INS (3456) P4 Signalling by a Reversible Kinase/Phosphatase and Methods and Compositions Related Thereto

Stephen Shears (NIEHS) *et al.*

U.S. Patent Application No. 10/508,363 filed 16 Sep 2004 (HHS Reference No. E–105–2002/0–US–03), claiming priority to 18 Mar 2002.

Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@mail.nih.gov.*

Receptor-dependent changes in Ins (3,4,5,6) P4 levels is a topic of general biological significance, since this regulates the activities of chloride channels that in turn regulate salt and fluid and mucus secretion from epithelial cells, cell volume homeostasis, and electrical excitability in neurons and smooth muscle.

The NIH announces new treatment methods for asthma, bronchitis and cystic fibrosis. The treatments consist of either increasing or decreasing the activity of inositol 1,3,4,5,6 pentakisphosphate 1-phosphatase in a patient, thereby controlling Ins (3,4,5,6) P4-signaling which in turn affects the chloride channels, ultimately regulating salt, fluid and mucus secretion. This modulation of inositol 1,3,4,5,6 pentakisphosphate 1-phosphatase is accomplished by either pharmacological or genetic intervention.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Cancer Therapy Using Vasoactive Intestinal Peptide Antagonists

T. Moody (NCI), D. Brenneman (NICHD), *et al.*

U.S. Patent No. 5,217,953 issued 08 Jun 1993 (HHS Reference No. E–009–1991/0–US–01); U.S. Patent No. 5,565,424 issued 15 Oct 1996 (HHS Reference No. E–009–1991/1–US–01); U.S. Patent No. 6,630,124 issued 07 Oct 2003 (HHS Reference No. E–301–1998/2–US–06); Worldwide IP coverage.

Licensing Contact: Susan Carson; 301/435–5020; *carsonsu@mail.nih.gov*.

The second leading cause of death in the United States is cancer and more than one million Americans are diagnosed with cancer each year, with this number likely to increase as the population ages. There remains a need for effective therapeutics with improved safety profiles, and promising results can be obtained through targeting receptors which are highly expressed on specific cancers. Vasoactive Intestinal Peptide (VIP) is a 28 amino-acid peptide hormone and one of several small neuropeptides that can function as autocrine growth factors. VIP mediates a variety of physiological responses and has been shown to exert stimulating and trophic effects on neoplastic cells inducing its own receptors by feedback mechanisms. Studies have shown that VIP receptors are present in many epithelial cancers including breast, colon, non-small cell lung carcinoma, and pancreatic and prostate cancers. Work by NIH scientists and their collaborators has shown that VIP receptor antagonists such as the lipophilic VIP antagonist SNH inhibit the growth of cancer cell lines in vitro and in vivo and potentiate the cytotoxicity of chemotherapeutic drugs. For example, results have shown that

SNH and taxol are synergistic at inhibiting breast cell cancer growth and can potentiate the cytotoxicity of taxol in an in vivo human xenograft breast cancer mouse model.

Combination therapy using these agents may therefore greatly enhance the response rate of different cancers to these drugs and may significantly reduce side effects by permitting a lower therapeutic dose to be administered. Available for licensing are compositions of matter and methods of use of VIP receptor antagonists.

Dated: September 15, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–19172 Filed 9–26–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

HIV-Encoded siRNA, microRNA and Suppressor of RNA Silencing

Yamina Bennasser *et al.* (NIAID)

U.S. Provisional Application No. 60/677,839 filed 05 May 2005 (HHS Reference No. E–203–2005/0–US–01).

Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

The present invention relates to virus-encoded siRNA and miRNA species and the use of such RNAs in the diagnosis, prevention and/or treatment of retroviral infection, especially HIV or SIV infection. This invention conveys the first evidence that HIV–1 encodes viral siRNA precursors in its genome and that natural HIV–1 infection provokes nucleic acid-based immunity in human cells. To overcome this cellular defense, the HIV–1 Tat protein has evolved to include a suppressor of RNA silencing (SRS) function. Additionally, this invention identifies five microRNA (miRNA) precursor candidates that regulate cellular gene expression at a post-transcriptional level. The five miRNA precursors (21–25 nucleotides in length) are encoded in highly conserved regions of HIV such as TAR sequence, gag, pol and nef genes. These findings indicate that viruses utilize RNA interference as a mechanism to regulate cellular gene expression.

This technology is further described in: Bennasser *et al.*, ''HIV–1 encoded candidate micro-RNAs and their cellular targets,'' Retrovirology 2004 Dec 15, 1(1):43, doi:10.1186/1742–4690–1–43; and Bennasser *et al.*, ''Evidence that HIV–1 encodes an siRNA and a suppressor of RNA silencing,'' Immunity 2005 May, 22(5):607–619, doi:10.1016/j.immuni.2005.03.010.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Miniature Laser-Induced Fluorescence Detector

Paul Smith, Nicole Morgan, Edward Wellner, Terry Phillips (ORS)

U.S. Provisional Application No. 60/682,847 filed 20 May 2005 (HHS Reference No. E–129–2005/0–US–01).

Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

Available for licensing and commercial development is a miniature laser-induced fluorescence detector having an in-line microfluidic detection cell. The detection cell finds application in High Performance Liquid Chromatography (HPLC), Capillary Electrophoresis (CE) and Mass Spectroscopy (MS) applications, among others. The cell for fluorescence measurements can have a measurement volume of 1 nL or less and a sample can be excited using two excitation wavelengths. The detection cell can include a 5 mm to 5 cm long capillary tube and an excitation fiber proximate to the capillary tube. A detection fiber is also proximate to the capillary tube, and the detection fiber has a diameter the same size or larger than the external diameter of the capillary tube. A plurality of both excitation and detection fibers can be used.

In addition to licensing, the technology may be available for further development through collaborative research opportunities with the inventors.

Cellular Receptor for Varicella-Zoster Virus and Cell-to-Cell Spread of Virus

Jeffery Cohen *et al.* (NIAID)

U.S. Provisional Application No. 60/684,526 filed 26 May 2005 (HHS Reference No. E–289–2004/0–US–01).

Licensing Contact: Chekesha S. Clingman; 301/435–5018; *clingmac@mail.nih.gov.*

This technology relates to identification of insulin degrading enzyme (IDE) as a cellular receptor for Varicella-Zoster-Virus (VZV), the etiologic agent of varicella (chickenpox) and zoster (shingles). Acute infection of VZV is followed by cell-associated viremia and the development of varicella rash. The virus establishes life-long latency in the nervous system and can reactivate to cause zoster. The mechanism of VZV entry into target cells and spread from cell-to-cell is not well understood. The inventors have shown that antibodies to IDE and recombinant IDE partially inhibit infection with the virus in cell culture. Reducing the level of IDE in the cell (with siRNA), or blocking the ability of IDE to bind with a VZV glycoprotein, markedly diminishes cell-to-cell spread of the virus in cell culture and partially inhibits infection of cells with cell-free virus. This invention further describes molecules that may have a role in the treatment or prevention of VZV infections, including antibodies to IDE, peptides that block IDE–VZV interactions, and other molecules that block binding activity of IDE.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

A Novel Amplification Method Permits Pathogens To Be Detected With Microarrays

Michael J. Brownstein, Charles Xiang, and Zhi-Qing Qi (NIMH)

U.S. Provisional Application No. 60/635,239 filed 09 Dec 2004 (DHHS Reference No. E–184–2004/0–US–01).

Licensing Contact: Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@mail.nih.gov.*

Available for licensing and commercial development is a high throughput, microarray-based multiplex method of detecting target nucleic acids in a sample. In particular, PCR is coupled with microarrays for the qualitative identification of multiple target nucleic acids, with primers specific for a target sequence, and used to detect genomic nucleic acids of pathogens of interest, or transcripts derived therefrom. Also claimed are oligonucleotide microarrays for use in such methods.

The present method is distinguished from other multiplex PCR assays by the additional steps to ensure specificity and sensitivity, so that a larger number of probes can be detected simultaneously in each single reaction. An important application of this method, for which it was developed, is the detection of multiple ''Category A List'' agents for the purpose of differential diagnosis in case of bioterrorism attacks. The method comprises: (a) screening the genomes of the desired infectious agents to find sequences specific for each of them and distinct from human sequences; (b) designing 60 base long oligonucleotide targets, to print on microarrays; and (c) including in the microarrays both sense and antisense versions of each, as well multiple targets per virus, to increase reliability.

Other methods, such as PCR amplification followed by separation and characterization of DNA products by gel electrophoresis, are simple and sensitive, but they have a number of inherent shortcomings. Highly sensitive PCR amplification tends to generate nonspecific DNA products, which complicate interpretation of the results. Additionally, in a typical method for detecting pathogens in a sample, PCR reactions for each pathogen must be run separately from one another due to differences in amplification conditions. Furthermore, in cases where multiplex PCR coupled with a microarray is used for the qualitative detection of several pathogens, the generation of nonspecific DNA products can be a significant problem. The current method is a rapid, high-throughput method for qualitative identification of multiple target nucleic acids that is sensitive, highly discriminating and robust.

Methods for Treating Viral-Associated Tumors With LFA–1 Inhibiting Statins

Jeffrey Cohen *et al.* (NIAID)

U.S. Provisional Application No. 60/515,013 filed 28 Oct 2003 (HHS Reference No. E–312–2003/0–US–01); PCT Application No. PCT/US2004/035829 (publication WO2005/042710) filed 28 Oct 2004 (HHS Reference No. E–312–2003/0–PCT–02).

Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

This technology describes the use of certain natural and synthetic statins, including simvastatin, other leukocyte function antigen-1 (LFA–1) inhibiting statins, and compounds derived from LFA–1 inhibiting statins and statin-like compounds, for treatment or prevention of Epstein-Barr Virus (EBV) associated tumors, including lymphomas that express LFA–1 and transforming proteins. Such compounds could also be used to treat tumors associated with other viruses that express LFA–1. Cancers associated with EBV that could be treated with the statins by methods described herein include gastric carcinoma (the second leading cause of cancer deaths worldwide), nasopharyngeal carcinoma, Hodgkin's disease, lymphoproliferative disease, T-cell lymphoma, and non-Hodgkin's lymphoma. These compounds could potentially be used as chemotherapeutics with possibly less severe side effects than currently employed chemotherapies.

This technology is further described in: Katano *et al.*, ''Simvastatin induces apoptosis of Epstein-Barr virus (EBV)-transformed lymphoblastoid cell lines and delays development of EBV lymphomas,'' PNAS, 2004 Apr 6, 101(14):4966–4971, doi 10.1073/pnas.0401064101.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Attenuated Human Parainfluenza Virus (PIV) for Use as Live, Attenuated Vaccines and as Vector Vaccines

U.S. Provisional Application No. 60/643,310 filed 12 Jan 2005 (HHS Reference No. E–295–2004/0–US–01)

Sheila M. Nolan *et al.* (NIAID)

and

U.S. Provisional Application No. 60/412,053 filed 18 Sep 2002 (HHS Reference No. E–092–2002/0–US–01); U.S. Patent Application No. 10/667,141 filed 18 Sep 2003 (HHS Reference No. E–092–2002/0–US–02; PCT Application No. PCT/US03/29685 filed 18 Sep 2003, which published as WO2004/027037 on 01 Apr 2004 (HHS Reference No. E–092–2002/0–PCT–03), and National Stage filed in Canada, Europe, Japan, Australia, and India

Mario H. Skiadopoulos *et al.* (NIAID)

Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

The identified technologies describe self-replicating infectious recombinant paramyxoviruses with one or more attenuating mutations, such as a separate variant polynucleotide encoding a P protein and a separate monocistronic polynucleotide encoding a V protein, or at least one temperature sensitive mutation and one non-temperature sensitive mutation. Compositions and methods for recovering, making and using the infectious, recombinant paramyxoviruses as described are also included (*e.g.* recombinant human parainfluenza virus type 2 (HPIV2)). In addition, these inventions provide novel tools and methods for introducing defined, predetermined structural and phenotypic changes into an infectious HPIV2 candidate for use in immunogenic compositions, including live attenuated virus vaccines. Furthermore, these inventions describe the recombinant HPIV2 P+V can be used to introduce attenuating mutations to develop live attenuated virus vaccines. The paramyxoviruses of the invention are also useful as vectors for expressing heterologous antigens (*e.g.* RSV, HMPV, measles or mumps viruses) in an immunogenic composition. As members of the paramyxoviruses, HPIVs are important pathogens causing severe lower respiratory tract infections in infants and young children. Despite considerable efforts, there are currently no parainfluenza virus vaccines available.

Advantages of the subject technologies to generate live attenuated viruses or vectored vaccine candidates via multiple mutations are the design of safe and stable viral vaccine candidates. Since two common vaccine development approaches (viral subunit vaccines and inactivated whole virus preparations) elicited either short-lived, inadequate immunity or unfavorable immune responses, the identified technologies provide a promising means to develop vaccines against HPIVs and other human pathogens. In addition, live attenuated viruses are the most promising candidate vaccines because they induce both local and systemic immunity and are efficacious even in the presence of passively transferred serum antibodies, the very situation found in the target population of infants with maternally derived antibodies.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Imaging With Positron-Emitting Taxanes as a Guide to Antitumor Therapy

Jerry M. Collins, Raymond W. Klecker, Lawrence Anderson (FDA)

U.S. Provisional Application No. 60/155,061 filed 21 Sep 1999 (HHS Reference No. E–263–1998/0–US–01); U.S. Patent Application Nos. 10/088,561 filed 19 Mar 2002 (HHS Reference No. E–263–1998/0–US–03) and 10/319,812 filed 16 Dec 2002 (HHS Reference No. E–263–1998/1–US–01) are pending.

Licensing Contact: Michael Shmilovich; (301) 435–5019; *shmilovm@mail.nih.gov.*

Available for licensing and commercial development is a method for using positron-emitting compounds to label taxane type drugs. This invention also describes methods of synthesizing these taxane type compounds. Further, methods to guide treatment of solid tumors, with labeled taxanes, are also disclosed in the present application. Advantages of using this technology include: (1) Avoidance of exposing patients to toxic drugs that have no potential for benefit; (2) ability to rapidly determine whether a given tumor will be likely to respond to a particular drug; and (3) the ability to monitor the impact of various dosages, schedules, and modulators for delivery, in situ, at the actual tumor under treatment conditions.

Additional information may be found in: Ravert *et al.*, ''Radiosynthesis of [^{11}C]paclitaxel,'' J Label Compd and Radiopharm, 2002, 45(6):471–477.

Dated: September 15, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–19173 Filed 9–26–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Cancer Epidemiology and Cancer Research Small Grant Program.

Date: November 8–10, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel & Executive Meeting Center, 1750 Rockville Pike, Regency Meeting Room, Rockville, MD 20852.

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, DEA/NCI/NIH, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, 301/594–1566, *slesinsm@mail.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19178 Filed 9–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be open to the pubic as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: October 24, 2005.

Open: October 24, 2005, 8 a.m. to 5 p.m.

Agenda: Strategic Planning-Translating Research Team Science/Clinical Research/Infrastructure Needs.

Place: Hotel Washington, 15th and Pennsylvania Ave., NW., Washington, DC 20004.

Contact Person: Abby Sandler, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, Building 6116, Room 212, 6116 Executive Boulevard, Bethesda, MD 20892, 301–451–9399.

Any interested person may file written comments with the committee by forwarding the comments to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person. Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19179 Filed 9–26–05; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Clinical Trial Data Collection Using Handheld Technology.

Date: October 12, 2005.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19180 Filed 9–26–05; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Research Project (R01s).

Date: October 24–25, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel & Evaluate Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Yan Z. Wang, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd. Suite 820, Bethesda, MD 20892, (301) 594–4957.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19174 Filed 9–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Metformin and Alzheimer's Disease.

Date: October 3, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

Date: October 11–12, 2005.

Time: 6 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise L. HSU, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705, *hsul@exmur.nia.niyh.gov.*

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee.

Date: October 12, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications,

Place: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alessandra M. Bini, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7708, *binia@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Mentored Research Scientist Development Award (K01).

Date: October 12, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications

Place: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Insulin in Aging.

Date: October 19, 2005.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue Room 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: William Cruce, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7704, *crucew@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, T32 Institutional Training Grant Review.

Date: October 19–20, 2005.

Time: 6 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jon E. Rolf, PhD, Scientific Review Administrator, Scientific Review Office, National Institute of Health, National Institutes on Aging, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814, 301–402–7703, *rolfj@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Lymphocytes in Aging.

Date: November 9, 2005.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19176 Filed 9–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 DD (51).

Date: October 14, 2005.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926. *skandasa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 AA (50)—Phase II Contract review.

Date: October 14, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Fishers Building, 5635 Fishers Lane, 3039, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ernestine Vanderveen, Acting Chief, EPRB, NIH/NIAA, Extramural Project Review Branch, 5635 Fishers Lane, Room 3039, Office of Extramural Activities, Bethesda, MD 20892–9304, (301) 443–2531, *tvanderv@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19181 Filed 9–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel.

Date: October 31, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Arthur A. Petrosian, Scientific Review Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, (301) 496–4253. *petrosia@mail.nih.gov.*

Name of Committee: National Library of Medicine Special Emphasis Panel.

Date: November 10, 2005.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Arthur A. Petrosian, Scientific Review Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, (301) 496–4253. *petrosia@mail.nih.gov.*

Name of Committee: National Library of Medicine Special Emphasis Panel.

Date: November 29, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.

Contact Person: Arthur A. Petrosian, Scientific Review Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, (301) 496–4253. *petrosia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coehlo

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19182 Filed 9–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mutations and Signal Transactions.

Date: September 29, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Hungyi Shau, PhD, Scientific Review Administration, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–435–1720, *shauhung@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Medical Imaging: Nuclear Imaging.

Date: October 7, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group.

Date: October 10–11, 2005.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mehrdad M. Tondravi, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892 301–435–1173, *tondravm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Data Management.

Date: October 11, 2005.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Malgorzata Klosek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Host-Virus Interaction.

Date: October 14, 2005.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221, *laigc@csr.nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group, Gastrointestinal Mucosal Pathobiology Study Section.

Date: October 17–18, 2005.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Arthritis, Connective Tissue and Skin Study Session.

Date: October 18–19, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776, *davidsoh@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neuroendocrinology, Neuroimmunology, and Behaviro Study Section.

Date: October 18–19, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Micahel Selmanoff, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, (301) 435–1119, *mselmanoff@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Gorup, Cardiac Contractility, Hypertrophy, and Failure Study Section.

Date: October 18–19, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Mariott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Olga A. Tjurmina, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028D, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Biology and Diseases of the Posterior Eye.

Date: October 18–19, 2005.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Michael H. Chaitin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitin@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics C Study Section.

Date: October 18–19, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Barbara Whitmarsh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, (301) 435–4511, *whitmarshb@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Oral, Dental and Craniofacial Sciences Study Section.

Date: October 18–19, 2005.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, N.W., Washington, DC 20037.

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *hoffeldt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biomedical Sensing and Instrumentation.

Date: October 18, 2005.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Pushpa Tandon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7854, Bethesda, MD 20892, (301) 435–2397, *tandonp@csr.nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group, Xenobiotic and Nutrient Disposition and Action Study Section.

Date: October 19–20, 2005.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., N.W., Washington, DC 20037.

Contact Person: Patricia Greenwel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892, (301) 435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Neural Basis of Psychopathology,

Addictions and Sleep Disorders Study Section.

Date: October 19–21, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Julius Cinque, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Hypersensitivity, Autoimmune, and Immune-mediated Diseases.

Date: October 19–20, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Bahiru Gametchu, DVM, MS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1225, *gametchb@csr.nih.gov.*

Name of Committee: Respiratory Sciences Integrated Review Group, Lung Injury, Repair, and Remodeling Study Section.

Date: October 19–20, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Ghenima Dirami, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2159, MSC 7818, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Motor Learning: Perception-action Systems.

Date: October 19, 2005.

Time: 2:30 p.m. to 3:30 p.m..

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848 (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Biological Rhythms and Sleep Study Section.

Date: October 19–20, 2005.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Selmanoff, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892–7844, 301–435–1119, *mselmanoff@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93–393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 16, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19177 Filed 9–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22531]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet as required to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings will be open to the public.

DATES: TSAC will meet on Wednesday, October 12, 2005, from 8 a.m. to 3:30 p.m. Working groups will meet on the previous day, Tuesday, October 11, 2005, from 8:30 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material for and requests to make oral presentations at the meetings should reach the Coast Guard on or before October 4, 2005. Requests to have a copy of your material distributed to each member of the Committee or working groups prior to the meetings should reach the Coast Guard on or before October 4, 2005.

ADDRESSES: TSAC will meet in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. The working groups will first meet in the same room and then, if necessary, move to separate spaces designated at that time. Send written material and requests to make oral presentations to Mr. Gerald P. Miante, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, G–MSO–1, Room 1210, 2100 Second Street SW., Washington, DC 20593–0001. This notice and related documents are available on the Internet at *http://dms.dot.gov* under the docket number USCG–2005–22531.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director, telephone 202–267–0214, fax 202–267–4570, or e-mail at: *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended).

Agenda of Committee Meeting

The agenda includes the following items:

(1) Status Report of the Commercial/Recreational Boating Interface Working Group;

(2) Status Report of the Mariner Deaths during Nighttime Barge Fleeting Operations Working Group;

(3) Status Report of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW) Implementation Working Group;

(4) Status Report of the Towing Vessel Inspection Working Group;

(5) Status Report on the Licensing Implementation Working Group;

(6) Presentation of a Task Statement on Towing Vessel Horsepower Standards;

(7) Presentation on a Legislative Change Proposal regarding Title 46 U.S. Code section 8509(b);

(9) Presentation of a Task Statement on Towing Vessel Bridge Visibility; and

(10) Presentation of a Task Statement on Voyage Planning.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. Members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant Executive Director no later than October 4, 2005. Written material for distribution at a meeting should reach the Coast Guard no later than October 4, 2005. If you would like a copy of your material distributed to each member of the Committee or Working Groups in advance of a meeting, please submit 20 copies to the Assistant Executive Director no later than October 4, 2005. You may also submit this material electronically to the e-mail address in **FOR FURTHER INFORMATION CONTACT**, no later than October 4, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the

meetings, contact the Assistant Executive Director as soon as possible.

Dated: September 21, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–19213 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Exploration and Drilling of Additional Coalbed Natural Gas and Conventional Gas Wells in the Riverton Dome Field, Wind River Indian Reservation, Fremont County, WY

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), in cooperation with the Eastern Shoshone and Northern Arapaho Tribes, Bureau of Land Management (BLM) and U.S. Environmental Protection Agency (EPA), intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for drilling additional coalbed natural gas wells and conventional gas wells in the Riverton Dome Field, Wind River Indian Reservation, Fremont County, Wyoming. The purpose of the proposed action is to meet the Tribes' need to maximize their economic benefit from this trust resource. This notice also announces a public scoping meeting to identify potential issues and alternatives to be considered in the EIS.

DATES: Written comments on the scope of the EIS or implementation of the proposal must arrive by October 28, 2005.

The public scoping meeting will be held October 12, 2005, from 7 p.m. to 9:30 p.m., or until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Ramon A. Nation, Deputy Superintendent, Trust Services, Bureau of Indian Affairs, Wind River Agency, P.O. Box 158, Fort Washakie, Wyoming 82514.

The public scoping meeting will be held at the St. Stephens Elementary School Cafeteria, 134 Mission Road, St. Stephens, Wyoming.

FOR FURTHER INFORMATION CONTACT: Ray Nation or Charlie Dillahunty, (307) 332–3718.

SUPPLEMENTARY INFORMATION: The Riverton Dome Coalbed Natural Gas (CBNG) and Conventional Gas Development Project area is located in Township 1S, Range 4E, Sections 13, 14, 23, 24, 25, 26, 35 and 36; Township 2S, Range 5E, Sections 1, 2, 11 and 12; Township 1S, Range 5E, Sections 17, 18, 19, 20, 29, 30, 31, and 32; and Township 2S, Range 5E, Sections 5, 6, 7 and 8, in the southeast corner of the Wind River Indian Reservation. The project area consists of approximately 13,804 acres, of which 12,632 are tribal and 1,172 are non-tribal surface and minerals.

The proposed action consists of drilling up to 336 CBNG and 20 conventional gas wells over the next 10 years, with a life-of-project of 20 to 40 years. Approximately 46 of the CBNG wells and 15 of the conventional wells would be drilled on existing pads. Economic conditions and the evaluation of the drilling results would determine the actual number of wells that would be drilled. In addition, the project would require 9000hp of new compression, and may require up to 88.8 miles of rights-of-way for construction of flow lines, access roads and power lines.

The initial disturbance from construction of well pads and compressor stations and construction within rights-of-way is estimated to be 1,081 acres, or 7.8 percent of the project area. Long-term disturbance after reclamation is anticipated to be 592 acres, or 4.3 percent of the project area. These disturbance values are based on 40-acre spacing. Initial and residual disturbance at 80-acre spacing would be 611 and 329 acres, respectively.

Each CBNG well may initially produce approximately 500 barrels of water per day, which is expected to decline rapidly. The three water disposal options in order of priority are: (1) Evaporation pit water disposal, (2) underground injection well disposal, and (3) surface discharge. The permits for the evaporation pit and deep well disposal of produced water have been approved. A permit application for surface discharge has been filed with, and is being reviewed by the EPA.

The Riverton Dome Field currently contains 55 oil and gas wells and 3 CBNG wells. In addition, the BIA has approved a CBNG Pilot Project, in which up to 20 CBNG wells may be drilled. Some of these wells may be drilled within the proposed project area while the Riverton Dome environmental analysis is being conducted. The drilling program will be monitored by the BIA and BLM to ensure that activities do not adversely affect the environment or prejudice the completion of the environmental analysis.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority: This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

Dated: September 15, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–19329 Filed 9–26–05; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Alma College, Alma, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of Alma College, Alma, MI. The human remains and associated funerary object were removed from Gratiot County, MI.

This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Alma College professional staff in consultation with representatives of the Saginaw Chippewa Indian Tribe of Michigan.

On March 13, 1920, human remains representing a minimum of one individual were removed from a burial in sec. 5, T. 11 N., R. 3 W. (site 20GR287), Arcada Township, in Gratiot County, MI, by an unknown individual and subsequently donated to Alma College. No known individual was identified. The one associated funerary object is a pontel glass bottle that dates to circa 1740–1780.

The location of the site is consistent with the historically documented territory of the Saginaw Chippewa Indian Tribe of Michigan during the 18th and 19th centuries.

Officials of Alma College have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of Alma College also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of Alma College have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Saginaw Chippewa Indian Tribe of Michigan.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object should contact Mary Theresa Bonhage-Freund, Department of Sociology and Anthropology, Alma College, 614 W. Superior, Alma, MI 48801, telephone (989) 463–7186, before October 27, 2005. Repatriation of the human remains and associated funerary object to the Saginaw Chippewa Indian Tribe of Michigan may proceed after that date if no additional claimants come forward.

Alma College is responsible for notifying the Saginaw Chippewa Indian Tribe of Michigan that this notice has been published.

Dated: August 31, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–19263 Filed 9–26–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Army Department of Defense, U.S. Army, Pohakuloa Training Area, U.S. Army Garrison, HI; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the U.S. Department of Defense, U.S. Army, Pohakuloa Training Area, U.S. Army Garrison, HI. The human remains were removed from Hawai'i Island, HI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the Notice of Inventory Completion published in the **Federal Register** on November 13, 2001 (FR Doc 01–28306, page 56855). It corrects the consulting parties by deleting Koa Mana from being listed as a consulting party because they were not part of the consultation.

This notice corrects the previously published Notice of Inventory Completion by substituting the following paragraph for paragraph three:

A detailed assessment of the human remains was made by U. S. Army installation staff, and U.S. Army Corps of Engineers, St. Louis District, MO, Mandatory Center of Expertise for the Curation and Management of Archaeological Collections professional staff in consultation with representatives Hui Malama I Na Kupuna O Hawai'i Nei, Hawai'i Island Burial Council, and Office of Hawaiian Affairs.

The following paragraphs are substituted for paragraphs eight and nine:

Officials of the U.S. Army have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native Hawaiian ancestry. Officials of the U.S. Army also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native Hawaiian human remains and the Hui Malama I Na Kupuna O Hawai'i Nei, Hawai'i Island Burial Council, and Office of Hawaiian Affairs.

Representatives of any other Indian tribe or Native Hawaiian organization that believes itself to be culturally affiliated with the human remains should contact Dr. Laurie Lucking, Cultural Resources Manager, Environmental Division, USAGHI, Building 105, WAAF, Schofield Barracks, HI 96857, telephone (808) 656–2878, extension 1052, before October 27, 2005. Repatriation of the human remains to the Hui Malama I Na Kupuna O Hawai'i Nei, Hawai'i Island Burial Council, and Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

U.S. Army is responsible for notifying the Hui Malama I Na Kupuna 'O Hawaii Nei, Hawai'i Island Burial Council, and Office of Hawaiian Affairs that this notice has been published.

Dated: August 23, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–19267 Filed 9–26–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Gila National Forest, Silver City, NM; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Agriculture, Forest Service, Gila National Forest, Silver City, NM; and in the possession of Arizona State Museum, University of Arizona, Tucson, NM; Field Museum of Natural

History, Chicago, IL; Logan Museum of Anthropology, Beloit College, Beloit, WI; Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM; Museum of New Mexico, Museum of Indian Arts and Culture, Santa Fe, NM; Ohio Historical Society, Columbus, OH; Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; University of Texas at Austin, Texas Memorial Museum, Austin, TX; and Western New Mexico University Museum, Silver City, NM. The human remains and associated funerary objects were removed from Gila National Forest, Catron County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of human remains and associated funerary objects reported in a Notice of Inventory Completion published in the **Federal Register** on July 22, 1998 (FR Doc 98–19536, pages 39293–39294) and in a subsequently corrected Notice of Inventory Completion published in the **Federal Register** on August 3, 2005 (FR Doc 05–15316, pages 44686–44687). In August 2005, the Field Museum of Natural History, Chicago, IL, re-examined the human remains and associated funerary objects taken from nine sites in the Gila National Forest, Catron County, NM. In light of the findings from the re-examination, the original notice of inventory, as well as the previously corrected notice of inventory are amended to include additions to the minimum number of individuals.

This notice corrects the July 22, 1998, Notice of Inventory Completion, by substituting the following paragraph for paragraph five:

Between 1935 and 1955, human remains representing 79 individuals were recovered from SU site, Oak Springs Pueblo, Tularosa Cave, Apache Creek Pueblo, Turkey Foot Ridge site, Wet Leggett Pueblo, Three Pines Pueblo, and South Leggett Pueblo by Dr. Paul Martin of the Field Museum of Natural History, Chicago, IL. The human remains are currently in the possession of the Field Museum of Natural History. No known individuals were identified. The 56 associated funerary objects include ceramic vessels and sherds, stone and shell jewelry, stone and bone tools, and projectile points.

The following paragraphs are substituted for paragraphs 27 and 28:

Officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 190 individuals of Native American ancestry. Officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 256 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, U.S. Department of Agriculture, Forest Service, 333 Broadway Boulevard, SE, Albuquerque, NM 87102, telephone (505) 842–3238, before October 27, 2005. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The U.S. Department of Agriculture, Forest Service, Gila National Forest is responsible for notifying the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: August 29, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–19265 Filed 9–26–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Homestead National Monument of America, Beatrice, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, National Park Service, Homestead National Monument of America, Beatrice, NE, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the superintendent, Homestead National Monument of America.

The first two items are a string of ten beads and an arrowhead. The catalog card states that the beads came from a burial ground on the White Mountain Reservation in Arizona in 1898. A catalog card accompanying the beads states that they were donated to the Beatrice Museum by Paul S. Mayerhoff. Park museum records state that the string of ten beads and the arrowhead came into the park collection from an unknown source in 1964. However, the monument staff believe that they were in fact donated as part of the Mayerhoff-Dietz collection that was donated in 1948 and cataloged in 1989.

The third item is a set of 224 beads strung together on a wire. These beads are very similar to those described above. Accompanying the string of 224 beads is a note card that reads, ''Indian Beads from an Indian Burial Ground, White Mountain Reservation, 1898, Arizona.'' These beads are part of the Mayerhoff-Dietz collection that was donated in 1948 and cataloged in 1989.

Officials of Homestead National Monument of America have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the three cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of Homestead

National Monument of America also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Mark Engler, Superintendent, Homestead National Monument of America, 8523 W. State Highway 4, Beatrice, NE 68310, telephone (402) 223–3514 before October 27, 2005. Repatriation of the unassociated funerary objects to the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona may proceed after that date if no additional claimants come forward.

Homestead National Monument of America is responsible for notifying the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona that this notice has been published.

Dated: August 29, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–19266 Filed 9–26–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: New York State Museum, Albany, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the New York State Museum, Albany, NY. The human remains and associated funerary objects were removed from Fulton and Montgomery Counties, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C 3003 (d) (3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by New York State Museum professional staff in consultation with representatives of the Akwesasne Library & Museum; Mohawk Nation Council of Chiefs, Akwesasne; and St. Regis Band of Mohawk Indians of New York.

In 1925, human remains representing a minimum of two individuals were removed from the Sand Hill site, NYSM Site #1191, approximately 1.25 miles northwest of Fort Plain, Minden Township, Montgomery County, NY, by New York State Museum staff. The human remains were encountered during construction of Route 5S and removed from burials during salvage excavations. No known individuals were identified. No associated funerary objects are present.

Three separate components are represented at the Sand Hill site. The earliest component dates to the Oak Hill Phase (A.D. 1300–1400). The middle component dates to the historic period based on diagnostic artifacts and could be the Mohawk village of Cawaoge, visited by Harmen Meyndertsen Van den Bogaert in A.D. 1634–1635. The latest component is also historic and dates to the 18th century. The human remains accessioned into the New York State Museum from this site were not associated with a specific occupational component although the presence of brass trade kettles suggests the human remains date to one of the historic components. Brass trade kettles are noted in museum records as artifacts that avocational archeologists had collected at the site. These items are not in the possession of New York State Museum.

In the 1930s, human remains representing a minimum of one individual were removed from the Otstungo site (also known as Cnj 1–1), NYSM Site #1156, in Minden Township, Montgomery County, NY, by avocational archeologist James R. Burggraf. The fragmentary human remains were found on the rear slope of the site. In 1994, the New York State Museum acquired the human remains from Mr. Burggraf's estate. No known individual was identified. No associated funerary objects are present.

The Otstungo site is a large, palisaded village site located on a steep ridge above Otstungo Creek. Recent investigations identified evidence of at least ten longhouses, a ditch, and a palisade. Radiocarbon dates, pottery analyses, and the lack of European trade goods at the site suggests the Otstungo site is characteristic of the Chance Phase, A.D. 1450–1525.

In 1935, human remains representing a minimum of one individual were removed from the Frank Jenks Farm, St. Johnsville Township, Montgomery County, NY, by unknown persons. The human remains were given to Ms. May L. Youker, historian of St. Johnsville. Ms. Youker donated the human remains to the New York State Museum later that same year (Accession No. A1935.64). No known individual was identified. The two associated funerary objects are one brass kettle and one portion of a small castellated ceramic pot.

The nature of the site, whether habitation or cemetery, is unknown. The style of the pot found in the burial is typical of the post-European contact period manufacture and is similar to ceramics from other Mohawk sites dating to the early 17th century. The flange on the brass kettle also dates the burial to A.D. 1610–1620.

In 1932 or 1933, human remains representing a minimum of three individuals were removed from the Oak Hill site (also known as Cnj 2–1), NYSM Site #1186, near Fort Plain in Minden Township, Montgomery County, NY, by unknown persons. In 2000, the human remains were acquired by the New York State Museum from an anonymous donor. No known individuals were identified. No associated funerary objects are present.

The Oak Hill site is a multi-component site comprised of a village area with three associated cemeteries. The Oak Hill site has been dated to circa A.D. 1635–1646, based on reports of diagnostic artifacts found at the site and in some of the burials, such as pottery vessels, kaolin pipe fragments, and glass beads. These items are not in the possession of New York State Museum.

In 1935 and 1947, human remains representing a minimum of two individuals were removed from the Jackson-Everson site, St. Johnsville Township, Montgomery County, NY, by Donald Lenig and Earl Casler. In 1950, Mr. Lenig donated the human remains to the New York State Museum. No known individuals were identified. No associated funerary objects are present.

The Jackson-Everson site was a habitation site and cemetery. The Euroamerican objects from the site suggest that the site was inhabited circa A.D. 1655–1679. Analysis of ceramics from the site suggests that the resident population was probably Huron. This evidence suggests that the site was inhabited by Attignawantan Huron immigrants who were persuaded to move to the Mohawk Valley after the destruction of their confederacy in 1650 by the Iroquois. By 1779, the Huron had long been assimilated into Mohawk culture and had traveled with them to Canada or to the south side of the Saint Lawrence River, and are represented

today by the St. Regis Band of Mohawk Indians of New York.

In 1943 and 1955, human remains representing a minimum of 13 individuals were removed from the Auriesville/Latchford site (also known as Fda 5), NYSM Site #1087, Glen Township, Montgomery County, NY. The 1943 excavation was conducted by Brother McGuiness. The 1955 excavation was conducted by Father Latchford. In 1955, Father Clifford M. Lewis and Father Thomas Grassman donated the human remains to the New York State Museum. No known individuals were identified. The 233 associated funerary objects are 92 coffin nail fragments and 141 coffin fragments.

Funerary objects found with the human remains excavated in 1943, but not donated to the New York State Museum, consisted of objects of Native American origin, such as tubular shell wampum, and objects of Euroamerican origin, such as glass beads. The beads are characteristic of types manufactured during the first quarter of the 18th century. Additional funerary objects found with the human remains consisted of coffin fragments. Individuals from both excavations were interred in coffins, but only the associated funerary objects from the 1955 excavation were donated to the New York State Museum. Based on the existence of historic artifacts and method of burial, the occupation of the Auriesville/Latchford site is determined to be A.D. 1700–1725.

In 1950, human remains representing a minimum of three individuals were removed from the Klemme site (also known as Cnj. 42–1), NYSM Site #1176, near Charlesworth Corners in Minden Township, Montgomery County, NY, during excavations by Donald Lenig and Earl Casler. The remains of one individual were donated to the New York State Museum by Mr. Lenig at an unknown time, but most likely soon after the excavation. In 2000, the remains of the two other individuals were donated by an anonymous donor. No known individuals were identified. The three associated funerary objects are one pottery sherd and two glass beads.

The Klemme site is located on a small knoll across a brook from the Crouse site (also known as the Krouse site, Cnj 14). The Crouse site is a historically known Mohawk habitation site and was visited in A.D. 1634 by Harmen Meyndertsen Van den Bogaert, who documented the site name as Tenotoge. Funerary objects date the Klemme site to the same time period as the Crouse site, which is determined to be A.D. 1625–1635.

In 1953, human remains representing a minimum of six individuals were removed from the Schoharie site (also known as the Fort Hunter Bridge site), approximately 100 yards from the east bank of the Schoharie Creek in Glen Township, Montgomery County, NY, by Father Clifford M. Lewis of the Auriesville Shrine. Father Lewis salvaged the human remains after the site was disturbed during road construction and looting had already occurred. In 1955, the human remains were donated to the New York State Museum by Father Thomas Grassman. No known individuals were identified. No associated funerary objects are present.

Eyewitness accounts indicated the individuals were buried in extended positions, possibly in wooden coffins. Funerary objects typical of contemporary Native American burial practices, such as glass beads and religious medals, were reportedly looted from the graves at the time of their discovery. Although there are no funerary objects in the New York State Museum collection from the Schoharie site, museum records indicate that Father Lewis found tiny white seed beads with the human remains. The Schoharie site is located near the ''Lower Mohawk Castle'', a Mohawk settlement, also known as ''Tionondoroge'' or ''Tehandaloga,'' near Fort Hunter, NY. Fort Hunter was built by the British to protect the local Mohawk community, and was occupied from A.D. 1713–1779. Based on the age of diagnostic European trade goods, the site probably dates to A.D. 1720–1750. Given the age of the Schoharie site and its proximity to Fort Hunter, the two sites are probably associated.

In 1953, human remains representing a minimum of two individuals were removed from the Brown site (also known as Cnj 55), NYSM Site #1204, in Canajoharie Township, Montgomery County, NY, by Donald Lenig and Earl Casler. Mr. Lenig donated the human remains to the New York State Museum later that same year. No known individuals were identified. No associated funerary objects are present.

The Brown site is a cemetery site. Glass beads and earthenware pottery found with other burials at the Brown site suggest the site utilization dates to circa A.D. 1650–1660. These items were not donated to the New York State Museum. The styles of pottery found are consistent with ceramic traditions practiced by the Mohawk during this time period.

In 1957, human remains representing a minimum of one individual were removed from the Getman site (also known as Cnj 25), NYSM Site #1200, near East Stone Arabia in Palatine Township, Montgomery County, NY, by William A. Ritchie and James V. Wright, during excavations sponsored by the New York State Museum. No known individual was identified. No associated funerary objects are present.

Excavation revealed post molds, a probable longhouse, and sections of a stockade. One individual is represented by a single deciduous tooth found within a post mold in a disturbed area of a house floor. Based on information provided during consultation, it is presumed that the tooth was intentionally placed in the posthole. There was no indication of a presence of a cemetery. On the basis of radiocarbon dates the site is dated to the Late Chance Horizon (A.D. 1300–1400), which is the middle prehistoric stage of Mohawk and Iroquois cultural development.

From 1960 to 1962, human remains representing a minimum of one individual were removed from the Galligan II site (also known as Cnj.90–1), along the Otsquago Creek in Minden Township, Montgomery County, NY, during test excavations by a group attempting to locate the remains of a Revolutionary War era fort. In 2000, the human remains were donated by an anonymous donor to the New York State Museum. No known individual was identified. No associated funerary objects are present.

The cemetery at the Galligan II site may have been associated with a nearby village site located on the opposite side of Otsquago Creek known as the Prospect Hill site. The Prospect Hill site was the main Mohawk village in the early 18th century. This Mohawk village is where many Mohawks moved following a raid by the French in A.D. 1693. Artifacts found at the Galligan II site have been used to date the site to approximately A.D. 1693–1755.

In 1962, human remains representing a minimum of one individual were removed from the Garoga site (also known as Las. 7), NYSM Site #2332, east of the Garoga Creek in Ephratah Township, Fulton County, NY, by New York State Museum staff. The fragmentary human remains were found in the plow zone. No known individual was identified. No associated funerary objects are present.

The Garoga site was a palisaded village with several longhouses. On the basis of cultural material held in the New York State Museum from excavations at the site, and radiocarbon dates, the site is dated to A.D. 1520–1590.

In 1965, human remains representing a minimum of three individuals were removed from the Van Evera-McKinny

site (CNJ. 51), NYSM Site #1232, Root Township, Montgomery County, NY, by Donald Lenig and Wayne Lenig. The human remains were donated to the New York State Museum at an unknown date after the excavation. No known individuals were identified. No associated funerary objects are present.

The Van Evera-McKinney site is a habitation site with three occupational components. The first occupational component is an early Mohawk village dating to circa A.D. 1635–1645. The second occupation component is an early Owasco component dating to circa. A.D. 1100–1300. The third component is an Euroamerican occupation dating to the Revolutionary War period. The human remains are associated with the A.D. 1635–1645 occupation based on the reported presence of an iron axe and a brass mouth harp in one of the burials. These cultural items are not in the possession of the New York State Museum.

In 1968, human remains representing a minimum of 17 individuals were removed from the Rice's Wood site (NYSM Site #1201), Palatine, Montgomery County, NY, during excavations by Dr. Robert E. Funk, New York State Museum staff. The site is located on a ridge overlooking the Knauderack Creek, two miles north of the Mohawk River. No known individuals were identified. The 3,275 associated funerary objects are 3,196 glass beads, 1 fragmented amber bead, 2 copper bead fragments, 1 beaver mandible and teeth fragments, 16 raspberry seeds, 4 squash seeds, 1 berry seed, 1 unidentified fruit seed, 1 modified bone fragment, 6 glass buttons, 17 oval shell beads, 1 fragmented brass kettle with a sample of preserved organic material and unmodified bone fragment, 2 castellated pottery vessels with effigy figures, 1 chain link fragment, 1 handle of a pewter spoon, 1 bone comb, 1 pewter spoon fragment, 1 brass crotal bell, 1 iron awl, 1 castellated pottery vessel, 6 fragmentary pottery vessels, 1 groundstone pestle, 1 bone bird effigy, 1 projectile point, 2 worked columella fragments, 1 cordage fragment, 1 fragmented pewter and glass case bottle, 1 fragmented unidentified pewter object, 1 rolled copper ornament with preserved thong and organic material, 1 metal fragment, and 1 soil sample.

The Rice's Wood site consists of a village and associated cemetery circa A.D. 1600–1620 based on the types of funerary objects found with the human remains.

In 1970, human remains representing two individuals were removed from the Klock site (also known as Las. 8–4), NYSM Site #2333, in Ephratah Township, Fulton County, NY, by Dr. Robert E. Funk, New York State Museum staff. No known individuals were identified. No associated funerary objects are present.

Excavation results indicate that the Klock site was a palisaded habitation site on a ridge overlooking Caroga Creek. The human remains, consisting of burned cranial fragments, were found in refuse pits in the habitation area. The material culture from the habitation area suggests that the site was inhabited circa A.D. 1524–1580.

At an unknown date, human remains representing a minimum of seven individuals were removed from the Wormuth site (also known as the Talarico site and Cnj 87–2), NYSM Site #4017, on the north side of the Mohawk River in Palatine Township, Montgomery County, NY, by unknown persons. In 2000, New York State Museum acquired the human remains from an anonymous donor. No known individuals were identified. No associated funerary objects are present.

The Wormuth site is a multi-component site with evidence of occupations from the 14th century Oak Hill phase (A.D. 1300–1400), the Chance phase (circa A.D. 1400–1525), and the protohistoric period (circa A.D. 1550). The human remains probably date to the period A.D. 1450–1525 based on the preponderance of diagnostic artifacts and radiocarbon dates.

At an unknown date, human remains representing a minimum of four individuals were removed from the Mitchell site (also known as Cnj 49–2), NYSM Site #1248, located in Root Township, Montgomery County, NY, by unknown persons. In 2000, the New York State Museum acquired the human remains from an anonymous donor. No known individuals were identified. No associated funerary objects are present.

The Mitchell site is a large village and associated cemetery. Based on the types of European trade goods found at the site, it has been dated to circa A.D. 1646–1666. The large size of the site and the dates of occupation suggest it may have been the location of a central Mohawk ''castle'' and was probably among the villages destroyed by the Marquis De Tracy in the French attack in A.D. 1666. A Mohawk ''castle'' is a large palisaded Mohawk settlement.

Historical evidence and oral history indicates that the seventeen sites from Fulton and Montgomery Counties, NY, are located in a region that was traditionally occupied by the Mohawk Indians and the sites are within the aboriginal lands of the Mohawk. Archeological evidence, based on ceramics and other diagnostic artifacts, indicate that the sites were inhabited during Mohawk occupation of the region. The human remains and associated funerary objects from the sites in Fulton and Montgomery Counties, NY, are determined to be culturally affiliated with the present-day descendants of the Mohawk represented by the Akwesasne Mohawk community composed of the Mohawk Nation Council of Chiefs and St. Regis Band of Mohawk Indians of New York.

Officials of the New York State Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 69 individuals of Native American ancestry. Officials of the New York State Museum also have determined that, pursuant to 25 U.S.C 3001 (3)(A), the 3,513 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the New York State Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Mohawk Nation Council of Chiefs, Akwesasne and St. Regis Band of Mohawk Indians of New York.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Lisa M. Anderson, NAGPRA Coordinator, New York State Museum, 3122 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020, before [*thirty days after publication in the* **Federal Register**]. Repatriation of the human remains and associated funerary objects to the St. Regis Band of Mohawk Indians of New York, representing the Akwesasne Mohawk community composed of the Mohawk Nation Council of Chiefs, Akwesasne and St. Regis Band of Mohawk Indians of New York may proceed after that date if no additional claimants come forward.

New York State Museum is responsible for notifying the Akwesasne Library & Museum; Mohawk Nation Council of Chiefs, Akwesasne; and St. Regis Band of Mohawk Indians of New York that this notice has been published.

Dated: August 23, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–19268 Filed 9–26–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of the Pacific, Stockton, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of University of the Pacific, Stockton, CA. The human remains were removed from San Joaquin County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of the Pacific professional staff in consultation with representatives of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California.

In 1964, human remains representing a minimum of one individual were removed from the campus of University of the Pacific in San Joaquin County, CA, by unknown persons during the construction of a parking lot. The remains were turned over to the university administration anonymously late in 1990, and a consultant was engaged to conduct a forensic analysis. No known individual was identified. No associated funerary objects are present.

The book *Archeology of the Northern San Joaquin Valley* (Schenk and Dawson, 1929) identifies a site on the campus of College of the Pacific containing indigenous remains. Another document of unknown provenance states that two ''graduate students in anthropology from Sacramento State College examined the site and judged the bones to be of the Miwok or Yokut Indian Tribes and about 300 years old.'' Consultation with Mr. Lalo Franco of the cultural office of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, confirmed that the provenience of the human remains is consistent with that of other discoveries of indigenous remains in the area. Mr. Franco consulted with representatives of other tribal entities who serve on a regional committee coordinating the repatriation of indigenous remains and artifacts, and it was determined by them that the Santa Rosa Indian Community would receive the remains from University of the Pacific and hold them until such time as the Ione Band of Miwok Indians of California can complete preparations to receive them on a permanent basis.

Officials of the University of the Pacific have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the University of the Pacific also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Santa Rosa Indian Community of the Santa Rosa Rancheria, California and the Ione Band of Miwok Indians of California.

The human remains were repatriated to NAGPRA representatives of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California on August 4, 2005, on behalf of the Ione Band of Miwok Indians of California. Representatives of any other Indian tribe that wishes to comment on this repatriation should contact Michael Capurso, University of the Pacific, Gladys L. Benerd School of Education, 3601 Pacific Avenue, Stockton, CA 95211, telephone (209) 946–2287.

The University of the Pacific is responsible for notifying the Buena Vista Rancheria of Me-wuk Indians of California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; and United Auburn Indian Community of the Auburn Rancheria of California that this notice has been published.

Dated: August 30, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–19264 Filed 9–26–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below.

Dates and Location: The Council will conduct its annual meeting at the following time and location:

Tuesday, October 25, 2005—Riverside, California—The meeting will be held in the Mission Inn located at 3649 Mission Inn Avenue. The meeting will begin at 8 a.m., recess at approximately 1 p.m., and reconvene briefly the following day at 1 p.m.

ADDRESSES: The meeting of the Council is open to the public. Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting, in person or by mail. To the extent that time permits, the Council chairman will allow public presentation of oral comments at the meeting. To allow full consideration of information by Council members, written notice must be provided to Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3753; faxogram (801) 524–3826; e-mail at: *kjacobson@uc.usbr.gov* at least FIVE (5) days prior to the meeting. Any written comments received prior to the meeting will be provided to Council members at the meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to discuss the accomplishments of federal agencies and make recommendations on future activities to control salinity. Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's

annual report. The Bureau of Reclamation, Bureau of Land Management, U.S. Fish and Wildlife Service, and United States Geological Survey of the Department of the Interior; the Natural Resources Conservation Service of the Department of Agriculture; and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities and the contents of the reports.

It is the Bureau of Reclamation's practice to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that their home address be withheld from public disclosure, which will be honored to the full extent allowable by law. To have your name and/or address withheld, please state this prominently at the beginning of your comment. Submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524–3753; faxogram (801) 524–3826; e-mail at: *kjacobson@uc.usbr.gov.*

Dated: September 6, 2005.

Darryl Beckmann,

Deputy Regional Director—UC Region, Bureau of Reclamation.

[FR Doc. 05–19145 Filed 9–26–05; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–851 (Review)]

Synthetic Indigo From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on synthetic indigo from China.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on synthetic indigo 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 21, 2005.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888), 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 August 5, 2005, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (70 FR 48588, August 18, 2005). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the review will be placed in the nonpublic record on January 19, 2006, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on February 9, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 27, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 1, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is February 1, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is February 17, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to

the subject of the review on or before February 17, 2006. On March 14, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 17, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the 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 of the Commission's rules.

By order of the Commission.

Issued: September 22, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–19287 Filed 9–26–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'')

Notice is hereby given that on September 20, 2005, a proposed Settlement Agreement in *In re Huffy Corp.,* No. 04–39148 through 04–39167, was lodged with the United States Bankruptcy Court for the Southern District of Ohio.

On March 14, 2005, the United States, on behalf of the Environmental Protection Agency (''EPA''), filed a Proof of Claim under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Recovery Act, as amended (''CERCLA''), 42 U.S.C. 9607(a), against Debtor Huffy Corporation seeking recovery of $20.6 million in unrecovered costs previously incurred, plus interest, and estimated future oversight costs of $2 million at the Baldwin Park Operable Unit (''BPOU'') of the San Gabriel Superfund Site located in Los Angeles County, California for remedy that will cost approximately $200 million. EPA's Proof of Claim also seeks $2.1 million in unrecovered costs previously incurred, plus interest, and estimated future costs of $8 million at the Lammers Barrel Superfund Site in Beavercreek, Ohio. The Settlement Agreement provides that the United States will have an allowed general unsecured claim against the Debtor in the amount of $1,050,000 for both sites, and that Huffy Corporation will pay the United States $246,000 to resolve the allowed claim from the proceeds of certain insurance settlements. The Settlement will be contingent upon Court approval of the insurance settlements.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the 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 *In re Huffy Corp.,* Nos. 04–39148–39167, D.J. Ref. 90–11–3–07706/1.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Ohio, Western Division, 200 W. Second Street, Room 602, Dayton, Ohio 45402 (contact Assistant United States Attorney Dale Ann Goldberg), at U.S. EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604 (contact Assistant Regional Maria Gonzalez), and U.S. EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105 (contact Senior Attorney Lewis Maldonado, Office of Regional Counsel). 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 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 form the Consent Decree Library, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–19170 Filed 9–26–05; 8:45am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 29, 2005 and published in the **Federal Register** on April 6, 2005, (70 FR 17473–17474), Sigma Aldrich Corporation, 3500 Dekalb Street, St. Louis, Missouri 63118, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxy-amphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I

Drug	Schedule
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Psilocyn (7438)	I
Benzylpiperazine (BZP) (7493)	I
Heroin (9200)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium powdered (9639)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances for drug testing and analysis.

Following the Notice of Application publication on April 6, 2005, (70 FR 17473–17474), Sigma Aldrich Corporation, 3500 Dekalb Street, St. Louis, Missouri 63118, requested a company name change to Sigma Aldrich Manufacturing LLC. DEA conducted a full investigation and inspection of the company which was found to be in compliance with all required regulations.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Sigma Aldrich Corporation to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Sigma Aldrich Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. Sections 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: September 20, 2005.

Joseph T. Rannazzisi,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–19192 Filed 9–26–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 21, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *Mills.Ira@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Regular extension of a currently approved collection.

Title: Labor Condition Application for H–1B, H–1B1, and E–3 Nonimmigrants.

OMB Number: 1205–0310.

Frequency: On occasion.

Affected Public: Business or other for-profit, individuals or households, not-for-profit institutions, Federal government, and state, local, or tribal governments.

Type of Response: Recordkeeping; reporting.

Number of Respondents: 200,000.

Annual Responses: 325,200.

Average Response time: 45 minutes or less, depending on the form.

Total Annual Burden Hours: 279,170.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: The application form and other requirements in these regulations for employers seeking to use nonimmigrants (H–1B, H–1B1, and E–3) in specialty occupations and as fashion models will permit the Department to meet its statutory responsibilities for program administration, management, and oversight.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–19249 Filed 9–26–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,661]

B&K Acquisition Corporation, Inc., Murrysville, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 3, 2005, in response to a worker petition filed by the company on behalf of workers at B&K Acquisition Corporation, Inc., Murrysville, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 30th day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5193 Filed 9–26–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,807]

TRW Automotive, Valve Division, Danville, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 22, 2005 in response to a petition filed by a company official on behalf of workers of TRW Automotive, Valve Division, Danville, Pennsylvania. The workers produced valves for internal combustion engines.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet this threshold level of employment. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 30th day of August, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5194 Filed 9–26–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,048; TA–W–54,048A; TA–W–54,048B; and TA–W–54,048D]

Westpoint Stevens, Dunson Facility, Bed Products Division, LaGrange, GA; Westpoint Stevens, Inc., Now Known As Westpoint Home, Inc, Lanier Facility, Bed Products Division, Valley, AL, Dixie Facility, Bath Products Division, Lagrange, GA, and Sheeting Division Office Opelika, AL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 19, 2004, applicable to workers of the WestPoint Stevens, Inc., Dunson Facility, Bed Products Division, LaGrange, Georgia, Lanier Facility, Bed Products Division, Valley, Alabama and Dixie Facility, Bath Products Division, LaGrange, Georgia. The notice was published in the **Federal Register** on March 12, 2004 (69 FR 11889). The certification was amended on April 6, 2005 to included workers of the Sheeting Division Office of the subject firm, in Opelika, Alabama. The notice was published in the **Federal Register** on April 25, 2005 (70 FR 21252).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of sheeting materials.

Information submitted to the Department shows that on August 8, 2005, American Real Estate Partners purchased WestPoint Stevens, Inc. and is now known as WestPoint Home, Inc.

Accordingly, the Department is amending this certification to reflect the new ownership.

The intent of the Department's certification is to include all workers of WestPoint Stevens, Inc., Dunson Facility, Bed Products Division, WestPoint Stevens, Lanier Facility, Bed Products Division, WestPoint Stevens, Dixie Facility, Bath Products Division and the WestPoint Stevens, Sheeting Division Office who were adversely affected by increased imports.

The amended notice applicable to TA–W–54,048, TA–W–54,048A, TA–W–54,048B and TA–W–54,048D are hereby issued as follows:

All workers of WestPoint Stevens, Inc., Now Known as WestPoint Home, Inc., Dunson Facility, Bed Products Division, LaGrange, Georgia (TA–W–54,048), WestPoint Stevens, Inc., Now Known as WestPoint Home, Inc., Lanier Facility, Bed Products Division, Valley, Alabama (TA–W–54,048A), West Point Stevens, Inc., Now Known as WestPoint Home, Inc., Dixie Facility, Bath Products, LaGrange, Georgia (TA–W–54,048B), and WestPoint Stevens, Inc., Now Known as WestPoint Home, Inc., Sheeting Division Office, Opelika, Alabama (TA–W–54,048D), who became totally or partially separated from employment on or after January 15, 2003, through February 19, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5183 Filed 9–26–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,883]

Westpoint Stevens, Inc., Now Known as Westpoint Home, Inc, Drakes Branch, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 20, 2004, applicable to workers of the WestPoint Stevens, Inc., Drakes Branch, Virginia. The notice was published in the **Federal Register** on June 17, 2004 (69 FR 33942).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of bath towels.

Information submitted to the Department shows that on August 8, 2005, American Real Estate Partners purchased WestPoint Stevens, Inc. and is now known as WestPoint Home, Inc.

Accordingly, the Department is amending this certification to reflect the new ownership.

The intent of the Department's certification is to include all workers of WestPoint Stevens, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–54,883 is hereby issued as follows:

All workers of WestPoint Stevens, Inc., Now Known as WestPoint Home, Inc., Drakes Branch, Virginia, who became totally or partially separated from employment on or after April 28, 2003, through May 20, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5184 Filed 9–26–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,978]

Westpoint Stevens, Inc., Now Known as Westpoint Home, Inc, Fairfax Manufacturing Plant, Valley, AL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on July 14, 2004, applicable to workers of the WestPoint Stevens, Inc., Fairfax Manufacturing Plant, Valley, Alabama. The notice was published in the **Federal Register** on August 3, 2004 (69 FR 46575).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in manufacturing and weaving yarn.

Information submitted to the Department shows that on August 8, 2005, American Real Estate Partners purchased WestPoint Stevens, Inc. and is now known as WestPoint Home, Inc.

Accordingly, the Department is amending this certification to reflect the new ownership.

The intent of the Department's certification is to include all workers of WestPoint Stevens, Inc., Fairfax Manufacturing Plant who were adversely affected by increased imports.

The amended notice applicable to TA–W–54,978 is hereby issued as follows:

All workers of WestPoint Stevens, Inc., Now Known as WestPoint Home, Inc., Fairfax Manufacturing Plant, Valley, Alabama, who became totally or partially separated from employment on or after May 24, 2003, through March 28, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

and

I further determine that all workers of West Point Stevens, Inc., Now Known as WestPoint Home, Inc., Fairfax Manufacturing Plant, Valley, Alabama, are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of August, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5185 Filed 9–26–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,006]

Westpoint Stevens, Inc., Now Known as Westpoint Home, Inc, Longview Plant, Bed Products Division, Hickory, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 15, 2004, applicable to workers of the WestPoint Stevens, Inc., Longview Plant, Bed Products Division, Hickory, North Carolina. The notice was published in the **Federal Register** on July 7, 2004 (69 FR 40983). On April 8, 2005, in accordance with Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), the same worker group was issued a Certification of Eligibility to Apply for Alternative Trade Adjustment Assistance. The notice was published in the **Federal Register** on May 16, 2005 (70 FR 25864).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of comforters.

Information submitted to the Department shows that on August 8, 2005, American Real Estate Partners purchased WestPoint Stevens, Inc. and is now known as WestPoint Home, Inc.

Accordingly, the Department is amending this certification to reflect the new ownership.

The intent of the Department's certification is to include all workers of WestPoint Stevens, Inc., Longview Plant, Bed Products Division who were adversely affected by increased imports.

The amended notice applicable to TA–W–55,006 is hereby issued as follows:

All workers of WestPoint Stevens, Inc., Now Known as WestPoint Home, Inc., Longview Plant, Bed Products Division, Hickory, North Carolina, who became totally or partially separated from employment on or after June 1, 2003, through June 15, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5186 Filed 9–26–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,746]

WestPoint Stevens, Inc., Now Known as WestPoint Home, Inc, Alamance Plant and Distribution Center, Bed Products Division, Burlington, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 16, 2004, applicable to workers of the WestPoint Stevens, Inc., Alamance Plant and

Distribution Center, Bed Products Division, Burlington, North Carolina. The notice was published in the **Federal Register** on December 9, 2004 (69 FR 71429).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of bed comforters and shams.

Information submitted to the Department shows that on August 8, 2005, American Real Estate Partners purchased WestPoint Stevens, Inc. and is now known as WestPoint Home, Inc.

Accordingly, the Department is amending this certification to reflect the new ownership.

The intent of the Department's certification is to include all workers of WestPoint Stevens, Inc., Alamance Plant and Distribution Center, Bed Products Division who were adversely affected by increased imports.

The amended notice applicable to TA–W–55,746 is hereby issued as follows:

All workers of WestPoint Stevens, Inc., Now Known as WestPoint Home, Inc., Alamance Plant and Distribution Center, Bed Products Division, Burlington, North Carolina, who became totally or partially separated from employment on or after October 4, 2003, through November 16, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of August, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5187 Filed 9–26–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,333]

Westpoint Stevens, Inc., Now Known as Westpoint Home, Inc, Bed Products Division, Clemson, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 9, 2005, applicable to workers of the WestPoint Stevens, Inc., Bed Products Division, Clemson, South Carolina. The notice was published in the **Federal Register** on March 9, 2005 (70 FR 11704).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of sheets and pillowcases.

Information submitted to the Department shows that on August 8, 2005, American Real Estate Partners purchased WestPoint Stevens, Inc. and is now known as WestPoint Home, Inc.

Accordingly, the Department is amending this certification to reflect the new ownership.

The intent of the Department's certification is to include all workers of WestPoint Stevens, Inc., Bed Products Division who were adversely affected by increased imports.

The amended notice applicable to TA–W–56,333 is hereby issued as follows:

All workers of WestPoint Stevens, Inc., Now Known as WestPoint Home, Inc., Bed Products Division, Clemson, South Carolina, who became totally or partially separated from employment on or after January 11, 2004, through February 9, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5189 Filed 9–26–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,546]

Westpoint Stevens, Inc., Now Known as Westpoint Home, Inc., Scotland Plant, Wagram, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 28, 2005, applicable to workers of the WestPoint Stevens, Inc., Scotland Plant, Wagram, North Carolina. The notice was published in the **Federal Register** on May 2, 2005 (70 FR 22711).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of woven towel fabric.

Information submitted to the Department shows that on August 8, 2005, American Real Estate Partners purchased WestPoint Stevens, Inc. and is now known as WestPoint Home, Inc.

Accordingly, the Department is amending this certification to reflect the new ownership.

The intent of the Department's certification is to include all workers of WestPoint Stevens, Inc., Scotland Plant who were adversely affected by increased imports.

The amended notice applicable to TA–W–56,546 is hereby issued as follows:

All workers of WestPoint Stevens, Inc., Now Known as WestPoint Home, Inc., Scotland Plant, Wagram, North Carolina, who became totally or partially separated from employment on or after February 9, 2004, through March 28, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5190 Filed 9–26–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,931]

Westpoint Stevens, Inc., Now Known as Westpoint Home, Inc, Sparks Plant, Basic Bedding Division, Including On-Site Leased Workers From Express Personnel and Personnel Services, Sparks, NV; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and

Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on June 3, 2005, applicable to workers of the WestPoint Stevens, Inc., Sparks Plant, Basic Bedding Division, including on-site leased workers from Express Personnel and Personnel Services, Sparks, Nevada. The notice was published in the **Federal Register** on June 28, 2005 (70 FR 37117).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of down filled and polyester filled pillows and down filled comforters.

Information submitted to the Department shows that on August 8, 2005, American Real Estate Partners purchased WestPoint Stevens, Inc. and is now known as WestPoint Home, Inc. Accordingly, the Department is amending this certification to reflect the new ownership.

The intent of the Department's certification is to include all workers of WestPoint Stevens, Inc., Sparks Plant, Basic Bedding Division who were adversely affected by increased imports.

The amended notice applicable to TA–W–56,931 is hereby issued as follows:

All workers of WestPoint Stevens, Inc., Now Known as WestPoint Home, Inc., Sparks Plant, Basic Bedding Division, including on-site leased workers from Express Personnel Staffing Agency and Personnel Services, Sparks, Nevada, who became totally or partially separated from employment on or after April 11, 2004, through June 3, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

and

I further determine that all workers of WestPoint Stevens, Inc., Now Known as WestPoint Home, Inc., Sparks Plant, Basic Bedding Division, including on-site leased workers from Express Personnel Staffing Agency and Personnel Services, Sparks, Nevada, are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of August, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5191 Filed 9–26–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meetings and Agenda

The regular Fall meetings of the Business Research Advisory Council and its committees will be held on October 19 and 20, 2005. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's program. Membership consists of technical officials from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday—October 19 (Conference Rooms 2 & 3)

10–11:30 a.m.–Committee on Productivity and Foreign Labor Statistics

1. Technical revisions to the major sector productivity and costs measures
2. Update on multifactor productivity releases
3. Industry productivity trends
4. Study of international hours of work data
5. NAICS conversion of international comparisons of hourly compensation costs in manufacturing component industries
6. Discussion of agenda items for the Spring 2006 meeting

1–2:30 p.m.—Committee on Price Indexes

1. Treatment of Housing in the CPI
2. Status update on the PPI service sector and non-residential construction initiatives
3. Discussion of agenda items for the Spring 2006 meeting

3–4:30 p.m.—Committee on Compensation and Working Conditions

1. New Sample of Areas Selected for the National Compensation Survey (NCS)
2. New NCS product: Interarea pay comparisons
3. Match bias in Employment Cost Index and Employer Cost for Employee Compensation (ECI/ECEC) imputation
4. Update on ECI changes and development
5. Additional items as raised by the members
6. Discussion of agenda items for the Spring 2006 meeting

Thursday—October 20 (Conference Rooms 2 & 3)

8:30–10 a.m.—Committee on Employment and Unemployment Statistics

1. Status of BLS proposal for revisions to the Current Employment Statistics (CES) survey, including dropping the collection and publication of women workers data
2. Pilot CES supplemental survey on temporary help and leasing. We are looking for feedback on our draft questionnaire and for topic suggestions for other CES supplements.
3. The relationship between firm growth and worker flows: research using Job Openings and Labor Turnover Survey (JOLTS) microdata
4. Discussion of agenda items for the Spring 2006 meeting

10:30 a.m.—12 p.m.–Council Meeting

1. Council Chairperson's address
2. Commissioner's address

1:30—3 p.m.–Committee on Occupational Safety and Health Statistics

1. Results from the 2004 Census of Fatal Occupational Injuries
2. Update on special survey of employer Workplace Violence Prevention policies
3. Research on injury, illness, and fatality rates
4. Internet collection—2005 experience and plans for 2006
5. Research into injury, illness, and fatality data for special populations
6. Updates—schedule of next news releases; budget status
7. Discussion of agenda items for the Spring 2006 meeting

The meetings are open to the public. Persons wishing to attend these meetings as observers should contact Tracy A. Jack, Liaison, Business Research Advisory Council, at 202–691–5869.

Signed at Washington, DC the 21st day of September 2005.

Kathleen P. Utgoff,

Commissioner.

[FR Doc. 05–19250 Filed 9–26–05; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Senior Executive Service (SES) Performance Review Board; Members

AGENCY: National Archives and Records Administration.

ACTION: Notice; SES Performance Review Board.

SUMMARY: Notice is hereby given of the appointment of members of the National Archives and Records Administration (NARA) Performance Review Board.

DATES: This appointment is effective on September 27, 2005.

FOR FURTHER INFORMATION CONTACT: Steven G. Rappold, Human Resources Services Division (NHH), National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001, (301) 837–2084.

SUPPLEMENTARY INFORMATION: Section 4314(c) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review the initial appraisal of a senior executive's performance by the supervisor and recommend final action to the appointing authority regarding matters related to senior executive performance.

The members of the Performance Review Board for the National Archives and Records Administration are: Lewis J. Bellardo, Deputy Archivist of the United States and Chief of Staff, Adrienne C. Thomas, Assistant Archivist for Administrative Services, and Michael J. Kurtz, Assistant Archivist for Records Services—Washington, DC. These appointments supersede all previous appointments.

Dated: September 22, 2005.

Allen Weinstein,

Archivist of the United States.

[FR Doc. 05–19285 Filed 9–26–05; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadena G. Kennedy, Permit Office, Office of Polar Programs, Rm.755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On July 27, 2005, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on September 20, 2005 to: Sarah Andrews, Permit No. 2006–018.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 05–19254 Filed 9–26–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–7]

Nuclear Management Company; Palisades Independent Spent Fuel Storage Installation; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption to Nuclear Management Company, LLC (NMC or licensee), pursuant to 10 CFR 72.7, from specific provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7), and 72.214. The licensee wants to use the Transnuclear, Inc. (TN) NUHOMS Storage System, Certificate of Compliance No. 1004 (CoC or Certificate) Amendment No. 8 (32PT dry shielded canister (DSC)) to store spent nuclear fuel under a general license in an Independent Spent Fuel Storage Installation (ISFSI) associated with the operation of the Palisades Nuclear Plant (PNP), located in Van Buren County, Michigan. The requested exemption would allow NMC to store fuel in the TN NUHOMS®–32PT system using revised fuel specifications and fuel qualification tables prior to completion of the proposed TN NUHOMS CoC Amendment No. 8 rulemaking.

Environmental Assessment (EA)

Identification of Proposed

The proposed action would exempt NMC from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7), and 72.214 and enable NMC to use the TN NUHOMS®–32PT cask design as amended by proposed TN NUHOMS® CoC No. 1004, Amendment No. 8 at PNP. These regulations specifically require storage in casks approved under the provisions of 10 CFR Part 72 and compliance with the conditions set forth in the CoC for each dry spent fuel storage cask used by an ISFSI general licensee. The TN NUHOMS® CoC provides requirements, conditions, and operating limits in Attachment A, Technical Specifications. The proposed action would exempt NMC from the requirements of 10 CFR 72.212(a)(2) and 72.214 enabling the licensee to store fuel in the TN NUHOMS®–32PT DSC system prior to the effective date of the final rule change for the Amendment No. 8 approving the issuance of this amended CoC. The proposed action would also exempt NMC from the requirements of 10 CFR 72.212(b)(2)(i)(A) and 72.212(b)(7) to allow the use of revised fuel specification and fuel qualification tables in the proposed CoC for Amendment No. 8. Specifically, the exemption would be from the requirement that does not include provisions for the loading of low enrichment/high burnup fuel, assemblies with stainless steel plugging clusters, and reconstituted fuel into the NUHOMS–32PT storage system. NMC requested that the exemptions remain in effect for 90 days following the effective date of the final rule change to 10 CFR 72.214 to incorporate TN CoC No. 1004, Amendment No. 8. The proposed action would allow NMC to use the 32PT system as described in the proposed TN NUHOMS® CoC Amendment No. 8 requests currently under staff review.

The proposed action is in accordance with the licensee's request for exemption dated August 22, 2005, as supplemented on September 20, 2005,

Need for the Proposed Action

The proposed action is needed because NMC plans to initiate the transfer of the PNP spent fuel pool contents to the ISFSI in October 2005. The NMC transfer campaign includes loading fuel assemblies with low enrichment/high burnup, assemblies with stainless steel plugging clusters, and reconstituted fuel from the spent fuel pool into the 32PT DSC. Loading of these types of fuel assemblies would not be permitted based on the current TS for the NUHOMS®–32PT storage system. The proposed Amendment No. 8 to CoC No. 1004, as transmitted by TN in a letter dated, June 10, 2005, includes proposed changes to TS 1.2.1, ''Fuel Specifications.'' The proposed TS changes contain provisions for low enrichment/high burnup fuel, assemblies with stainless steel plugging clusters, and reconstituted fuel to be loaded into the NUHOMS®–32PT DSC. The proposed action is necessary because the 10 CFR 72.214 rulemaking to implement the TN NUHOMS® CoC Amendment No. 8 is not projected for completion until late Fall 2005, which will not support the PNP fuel transfer and dry cask storage loading schedule.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there will be no significant environmental impact if the exemptions are granted. The staff reviewed the analyses provided in the TN NUHOMS® amendment application addressing the NUHOMS®–32PT system. Included in this application were the revised fuel specification and fuel qualification tables that allow the loading of fuel assemblies with low enrichment/high burnup fuel, assemblies with stainless steel plugging clusters, and reconstituted fuel. The staff has completed its Safety Evaluation Reports (SER) associated with review of this application. The staff concluded that the NUHOMS system with the revised contents (low enrichment/high burnup fuel, assemblies with stainless steel plugging clusters, and reconstituted fuel) for the 32PT DSC meets the acceptance criteria specified in 10 CFR Part 72. The SER for the TN NUHOMS®–32PT system documenting the staff's safety findings and conclusions was included as an enclosure to the letter to U.B. Chopra, dated March 30, 2005.

The NRC concludes that there is reasonable assurance that the proposed exemptions have no impact on off-site doses.

The potential environmental impact of using the NUHOMS® system was initially presented in the Environmental Assessment (EA) for the Final Rule to add the TN Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel to the list of approved spent fuel storage casks in 10 CFR 72.214 (59 FR 65898, dated December 22, 1994). The potential environmental impact of using the NUHOMS®–32PT system was initially presented in the EA for the proposed rule to add the 32PTH system to the Standardized NUHOMS® system, Amendment No. 5 (68 FR 49726, dated August 19, 2003). The TN 32PT system does not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since there is no significant environmental impact associated with the proposed action, alternatives with equal or greater environmental impact were not evaluated. As an alternative to the proposed action, the staff considered denial or ''no-action'' of the proposed action. Denial of the exemption would result in no change in current environmental impact. NMC considers the ''no-action'' alternative to impact NMC's ability to provide affordable and competitive power since rescheduling of the fall 2005 loading campaign could impact future NMC budget planning.

Agencies and Persons Consulted

This exemption request was discussed with Mr. Lou Brandon, Chief of the Nuclear Facilities Unit, Department of Environmental Quality, for the State of Michigan, on September 7, 2005. He stated that the State had no comments on the technical aspects of the exemption. The NRC staff has determined that a consultation under Section 7 of the Endangered Species Act is not required because the proposed action 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 further consultation is required under Section 106 of the National Historic Preservation Act.

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 Commission finds that the proposed action of granting the exemption from specific provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7), and 10 CFR 72.214, to allow NMC to use the proposed CoC No. 1004, Amendment No. 8, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not warranted.

In accordance with 10 CFR 2.390 of NRC's ''Rules of Practice,'' final NRC records and documents regarding this proposed action are publicly available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). The request for exemption dated August 22, 2005, and September 20, 2005, was docketed under 10 CFR Part 72, Docket No. 72–7. 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), O–1F21, 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 20th day of September, 2005.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–5176 Filed 9–26–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–05982]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Safety Light Corporation in Bloomsburg, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Robert Prince, Decommissioning Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5376, fax (610) 337–5269; or by e-mail: *RJP4@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Safety Light Corporation (SLC) to renew Materials License No. 37–00030–02, to authorize characterization and decommissioning under specified conditions at its facility in Bloomsburg, Pennsylvania. NRC has prepared an Environmental Assessment

(EA) in support of this action in accordance with the requirements of 10 CFR Part 51. The renewed license would also grant SLC exemptions from the financial assurance requirements for decommissioning contained in 10 CFR 30.32 and 30.35. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to renew NRC Materials License No. 37–00030–02 for characterization and other decommissioning activities through December 2007, and pursuant to 10 CFR 30.11, grant SLC exemptions from the financial assurance requirements for decommissioning contained in 10 CFR 30.32 and 30.35. The renewed license will require that the SLC submit work plans and health and safety plans to the NRC for approval prior to beginning other decommissioning activities at the Bloomsburg, Pennsylvania facility. The renewed license will also require that SLC develop a plan for the orderly shutdown of licensed activities and make prescribed monthly deposits into the decommissioning trust fund during the license renewal period in accordance with the Settlement Agreement between NRC, SLC and Pennsylvania Department of Environmental Protection, as approved by the Atomic Safety and Licensing Board on June 29, 2005.

The NRC staff has prepared an EA in support of the license amendment. The licensee does not have sufficient financial assurance to complete remediation activities. The issuance of this amendment covers existing material already present on the site from past operations and does not authorize an increase in the amount of material authorized by the license. No changes are being made to the type or amount of effluents that may be released from the site, and no significant increase in public radiation exposure is expected. By renewing the license, NRC can also require the completion of certain actions to provide for an orderly cessation of licensed activities, and require SLC to cooperate with the Environmental Protection Agency in its evaluation and conduct of future remediation activities. The actions to be taken by the licensee are also in the public interest, and the exemption of specific financial assurance requirements until December 31, 2007 will not endanger life or property or common defense and security.

Therefore, the NRC staff concluded that the action to renew License No. 37–00030–02 and grant SLC exemptions from the financial assurance requirements for decommissioning complies with 10 CFR Part 20 and 10 CFR 30.11.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to renew the license and grant the exemptions. On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action. Accordingly, a FONSI is appropriate.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are the Environmental Assessment (ML052630022 and the SLC renewal request dated April 24, 2004 (ML041310318). 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 (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Documents related to operations conducted under this license not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia/foia-privacy.html.*

Dated at King of Prussia, Pennsylvania, this 20th day of September, 2005.

For the Nuclear Regulatory Commission.

Marie Miller,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E5–5177 Filed 9–26–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of September 26, October 3, 10, 17, 24, 31, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 26, 2005

There are no meetings scheduled for the Week of September 26, 2005.

Week of October 3, 2005—Tentative

There are no meetings scheduled for the Week of October 3, 2005.

Week of October 10, 2005—Tentative

There are no meetings scheduled for the Week of October 10, 2005.

Week of October 17, 2005—Tentative

Tuesday, October 18, 2005

9:30 a.m.—Briefing on Decommissioning Activities and Status (Public Meeting)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 24, 2005—Tentative

Wednesday, October 26, 2005

1:30 p.m.—Discussion of Security Issues (Closed-Ex. 1)

Week of October 31, 2005—Tentative

Tuesday, November 1, 2005

9:30 a.m.—Briefing on Implementation of Davis-Besse Lessons Learned Task Force (DBLLTF) Recommendations (Public Meeting)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 451–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the

NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TTD: 301–415–2100, or by e-mail at *ask@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: September 22, 2005.

Debra L. McCain,

Office of the Secretary.

[FR Doc. 05–19321 Filed 9–23–05; 9:52 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses

Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 1, 2005, to September 15, 2005. The last biweekly notice was published on September 13, 2005 (70 FR 54085).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. 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.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined 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. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 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 within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) the name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's

property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor 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.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

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 email to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

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(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by email to *pdr@nrc.gov.*

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina; Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina; Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: August 5, 2005.

Description of amendment request: The proposed amendments request NRC consent to the indirect transfer of control of the licenses for the Oconee Nuclear Station, Units 1, 2, and 3, the McGuire Nuclear Station, Units 1 and 2, and the Catawba Nuclear Station, Units 1 and 2. The transfers of control will result from the creation of a new holding company that will become the parent of the current licensee. The new holding company, to be named Duke Energy Corporation, that will result from the business combination of Duke Energy with Cinergy Corporation (Cinergy). The licensee, current Duke Energy, will convert to a limited liability company (LLC) and be re-named Duke Power Company LLC (Duke Power).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Conforming Amendments Do Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The amendments do not involve any change in the design, configuration, or operation of the nuclear units. All Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications remain unchanged. Also, the Physical Security Plans and related plans, the Operator Training and Requalification Programs, the Quality Assurance Programs, and the Emergency Plans will not be materially changed by the proposed license transfers and amendments.

The technical qualifications of the operating licensee will not be reduced. Personnel engaged in operation, maintenance, engineering, assessment, training, and other related services will not be changed. The Duke Energy officers and executives currently responsible for the overall safe operation of the nuclear plants are expected to continue in the same capacity.

2. The Conforming Amendments Do Not Create the Possibility of a New or Different kind of Accident From Any Accident Previously Evaluated

The amendments do not involve any change in the design, configuration, or operation of the nuclear plant. The current plant design and design bases will remain the same. The current plant safety analyses, therefore, remain complete and accurate in addressing the design basis events and in analyzing plant response and consequences.

The Limiting Conditions for Operations, Limit Safety System Settings and Safety Limits specified in the Technical Specifications are not affected by the proposed changes. As such, the plant conditions for which the design basis accident analyses were performed remain valid.

The amendments do not introduce a new mode of plant operation or new accident precursors, do not involve any physical alterations to plant configurations, or make changes to system set points that could initiate a new or different kind of accident.

3. The Conforming Amendments Do Not Involve a Significant Reduction in a Margin of Safety

The amendments do not involve a change in the design, configuration, or operation of the nuclear plants. The change does not affect either the way in which the plant structures, systems, and components perform their safety function or their design and licensing bases.

Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications. Because there is no change to the physical design of the plant, there is no change to any of these margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Evangelos C. Marinos.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: August 17, 2005.

Description of amendment request: The proposed amendment would allow a one-time extension of the 72-hour Completion Time for the Required Action of Condition B of Technical Specification 3.7.1, ''Standby Service Water (SW) System and Ultimate Heat Sink (UHS),'' and a one-time exemption from Note 1 of part B.1 of this Required Action. Specifically, the proposed one-time extension request is for an additional 72 hours to the Completion Time and would result in a 144-hour Completion Time for an inoperable SW subsystem. This would allow extensive maintenance to be conducted on the SW train B pump, not capable of being completed in the current 72-hour Completion Time.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

Since only one subsystem of SW components is affected by the condition and an additional failure is not considered while a plant is in a Limiting Condition for Operation (LCO) Action, the operable SW subsystem is adequate to maintain compliance with the plant's design basis. Thus, this condition will not alter assumptions relative to the mitigation of an accident or transient event.

Energy Northwest has determined that there is no significant risk associated with the operation of the plant for an additional 3 days with one SW subsystem out of service. The incremental change in risk has been quantitatively evaluated using the guidance of Regulatory Guide [RG] 1.174 and 1.177. The incremental risk values are within the criteria of Region III (where the increase in risk is considered ''very small'') as established in RG 1.174.

Based on this evaluation, there is no significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

This proposed action only extends the CT [Completion Time] and will not physically alter the plant. No new or different type of equipment will be installed by this action. The changes in methods governing normal plant operation are consistent with current safety analysis assumptions. No change to the system as evaluated in the Columbia Generating Station safety analysis is proposed. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Response: No.

Columbia is designed with sufficient redundancy such that a SW subsystem may be removed from service for maintenance or testing. The remaining subsystem is capable of providing water and removing heat loads to satisfy the UFSAR [Updated Final Safety Analysis Report] requirements for accident mitigation or unit safe shutdown.

A risk-informed evaluation concluded that the risk contribution of the CT extension is non-risk significant.

There will be no change to the manner in which safety limits or limiting safety system settings are determined nor will there be any change to those plant systems necessary to assure the accomplishment of protection functions. For these reasons, the proposed amendment does not involve a significant reduction in a margin of safety.

Based upon the analysis provided herein, the proposed amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Daniel S. Collins, Acting.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: July 27, 2005.

Description of amendment request: The proposed change would revise technical specification (TS) 3/4.8.1.1, ''A. C. Sources—Operating,'' to adopt a more recent standard for diesel fuel oil testing and remove the restriction that certain surveillance requirements be performed during shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to TS SR [surveillance requirement] 4.8.1.1.2.b affects the testing standard for the fuel oil supply for the emergency diesel generators (EDGs). The fuel oil supply is not an initiator of any accident previously evaluated. The fuel oil supply supports the accident mitigation functions of the EDGs, which serve as the standby source for A.C. power in the event of a loss of offsite power. Adoption of a more recent standard does not affect the capability of the diesel fuel oil to perform its required function. Therefore, the proposed change to

SR 4.8.1.1.2.b does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS SR 4.8.1.1.2.d affects the performance of load rejection testing and the 60-minute loaded run at greater than or equal to 2000 kW. Evaluations and operating history have demonstrated that performance of these tests online will not impact electrical distribution system reliability. No anticipated operational occurrence or accident would occur as a result of performing these tests online. Although the EDGs are rendered inoperable and unavailable during performance of these tests, these tests would be performed in conjunction with testing required by other specifications; therefore, the accumulated time of EDG inoperability and unavailability would not increase. The proposed change to SR 4.8.1.1.2.d does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to TS SR 4.8.1.1.2.b affects the testing standard for the fuel oil supply for EDGs. Applying the more recent standard for fuel oil testing does not create any new or different accident initiators because adoption of a more recent standard does not affect the capability of the diesel fuel oil to perform its required function.

The proposed change to TS SR 4.8.1.1.2.d affects the performance of load rejection testing and the 60-minute loaded run at greater than or equal to 2000 kW. Evaluations and operating experience have demonstrated that performance of these tests online will not impact electrical distribution system reliability. No new or different accidents could occur as a result of performing these tests online. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to TS SR 4.8.1.1.2.b affects the testing standard for the fuel oil supply for EDGs. Adoption of a more recent standard does not affect the capability of the diesel fuel oil to perform its required function.

The proposed change to TS SR 4.8.1.1.2.d affects the performance of load rejection testing and the 60-minute loaded run at greater than or equal to 2000 kW. Evaluations and operating experience have demonstrated that performance of these tests online regardless of the test outcome will not impact electrical distribution system reliability. The required testing will continue to demonstrate acceptable EDG performance. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Gene Y. Suh.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: July 27, 2005.

Description of amendment request: The proposed change would revise technical specification (TS) 3/4.10.2, ''Special Test Exceptions—Physics Tests,'' to increase the allowed time between the flux channel Channel Functional Tests and the beginning of Mode 2 Physics Tests from 12 hours to 24 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The changes affect the Limiting Condition for Operation for ''Special Test Exceptions—Physics Tests,'' in particular, the neutron flux instrumentation CHANNEL FUNCTIONAL TEST that must precede PHYSICS TESTING in MODE 2. The neutron flux instrumentation is not an accident initiator, but is credited for two events. These events are Uncontrolled Control Rod Assembly Group Withdrawal From a Subcritical Condition (Startup Accident), and Uncontrolled Control Rod Assembly Group Withdrawal at Power. The proposed change will not impact the operation of the neutron flux instrumentation during these events. Consequently, the proposed changes will have no impact on the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The changes affect the Limiting Condition for Operation for Refueling Operations—Instrumentation, in particular, the neutron flux instrumentation. The changes are only applicable in MODE 2. Under the proposed change, the neutron flux instrumentation will continue to operate in the same manner as previously considered. Accident initial conditions and assumptions remain as previously analyzed.

The proposed changes do not introduce any new or different accident initiators. In addition, the requested increase in the allowed time between the flux channel Channel Functional Tests and the beginning of Mode 2 Physics Tests from 12 hours to 24 hours will not adversely impact the instrumentation's stability or capability. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The changes affect the Limiting Condition for Operation for Refueling Operations—Instrumentation; in particular, the neutron flux instrumentation. The proposed changes to TS will not result in design changes to the neutron flux instrumentation or in changes to how the neutron flux instrumentation is used. As discussed in the response to question #1 above, channel operability will continue to be ensured by the CHANNEL CHECK and CHANNEL CALIBRATION requirements of TS 4.3.1.1.1. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Gene Y. Suh.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: August 11, 2005.

Description of amendment request: The proposed amendment would revise Figure 2–3 in Technical Specification (TS) 2.3(4) and related technical information to this figure in the Basis of TS 3.6. This figure shows the minimum volume of Tri-sodium Phosphate (TSP) required for a specified reactor coolant system (RCS) hot zero power (HZP) critical boron concentration (CBC) over the operating cycle. Maintaining a volume of TSP in the baskets that is within the area of acceptable operation of Figure 2–3 ensures that the recirculation water in the containment sump attains a pH of 7.0 or greater following a loss-of-coolant accident (LOCA). This figure allows the required volume of TSP to gradually decrease as HZP CBC decreases during the operating cycle. As HZP CBC decreases, less TSP is required to attain a pH of 7.0 or greater in the containment sump. Also, TS 3.6(2) is being revised to remove the term Dodecahydrate to be consistent with Fort Calhoun Station TS Amendment No. 232.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

There are no changes to the design or operation of the plant that could affect system, component, or accident functions as a result of revising the current volume of active TSP required during Operating Modes 1 and 2 with a new figure that reflects the future RCS volume change. All systems and components function as designed, and the performance requirements have been evaluated and found to be acceptable.

Allowing the required volume of active TSP to decrease over the operating cycle as HZP CBC decreases will ensure a pH of 7.0 or greater in the containment sump following a LOCA, yet provides [an] adequate margin for EEQ [environmental equipment qualification] concerns as containment sump pH is less likely to exceed 8.0. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed change. All systems, structures, and components previously required for mitigation of an event remain capable of fulfilling their intended design function with this change to the TS.

The proposed change has no adverse effects on any safety-related systems or component and does not challenge the performance or integrity of any safety-related system. The proposed change has evaluated the TSP configuration such that no new accident scenarios or single failures are introduced. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Allowing the required volume of active TSP to decrease as HZP CBC decreases still ensures a pH of 7.0 or greater in the containment sump following a LOCA and still provides [an] adequate margin for EEQ concerns as containment sump pH is less likely to exceed 8.0. Therefore, this change does not involve a significant reduction in the margin of safety.

Evaluations were made that indicate that the margin for pH control is not altered by the proposed changes. A TSP volume that is dependent on HZP CBC has been evaluated with respect to neutralization of all borated water and acid sources. These evaluations concluded that there would be no impact on pH control, and hence, no reduction in the margin of safety related to post LOCA conditions.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Daniel S. Collins, Acting.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: August 11, 2005.

Description of amendment request: The proposed amendment includes various changes to the Technical Specifications (TS). Specifically, Omaha Public Power District (OPPD) seeks to delete the surveillance requirement (SR) of TS 2.10.2(9)b(iii) to verify the shutdown margin every 8-hour shift during low power physics testing. This change will make TS 2.10.2(9)b more consistent with SR 3.1.7 of NUREG–1432, Standard Technical Specifications—Combustion Engineering Plants, Revision 3.

The Containment Structural Tests Report of TS 5.9.3c is proposed for deletion. Amendment No. 216 deleted TS 3.5(5), which required submittal of the TS 5.9.3c report. The deletion of the report and the remaining changes described in Attachment 1 are considered administrative in nature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment [change] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This license amendment request (LAR) makes no changes to the design or operation of the plant that could affect system, component, or accident functions.

The deletion of Technical Specification (TS) 2.10.2(9)b(iii) eliminates the need to verify shutdown margin (SDM) every 8 hours during low power physics testing. Reactivity equivalent to at least the highest estimated CEA worth is available from the operable CEA [control element assembly] groups withdrawn (assuming the most reactive CEA of the groups withdrawn is stuck in the fully withdrawn position). Each CEA not fully inserted is demonstrated capable of full insertion when tripped from at least the 50% withdrawn position within 7 days of reducing SDM. Finally, the position of the trippable control element assemblies (CEAs) during low power physics testing continues to be verified every 2 hours. The SDM provided by the CEAs ensures that the operators can respond promptly to unexpected increases in core reactivity. Thus, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Deletion of the Containment Structural Tests Report is not an initiator of any previously evaluated accidents. OPPD will continue to report conditions indicative of containment deterioration or degradation in the Inservice Inspection (ISI) Summary Report required by 10 CFR 50.55a, ASME [American Society of Mechanical Engineers] Section XI, Subsection IWA–6000, and TS 5.9.3a.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14864) of amendments that are considered not likely to involve significant hazards considerations. One or more of these examples are cited to justify deletion of the Containment Structural Tests Report and for each of the remaining administrative changes. Thus, these changes do not increase the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment [change] create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed change affects only the TSs and does not involve a physical change to the plant. No modifications are made to existing components nor will any new or different type of equipment be installed. The deletion of the surveillance requirement (SR) to verify SDM every 8 hours during low power physics testing does not create the possibility of a new or different kind of accident.

The SRs that remain ensure that the SDM provided by the CEAs is adequate and that the CEAs are capable of full insertion. CEA positions will continue to be verified at least once per [a] 2-hour interval during low power physics testing. The SDM provided by the CEAs ensures that the operators can respond promptly to unexpected increases in core reactivity.

The deletion of a report that is redundant to federal regulations is an administrative change that does not create the possibility of a new or different kind of accident. OPPD will continue to report conditions indicative of containment deterioration or degradation in the ISI Summary Report.

The remaining changes proposed by this LAR are administrative in nature. These changes do not impose different

requirements and do not alter assumptions made in the safety analysis and licensing basis. Therefore, they do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment [change] involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect any safety analysis assumptions. During low power physics testing, the position of the trippable CEAs will continue to be verified at 2-hour intervals. The deleted 8-hour SDM surveillance requirement is performed less frequently, is redundant and unnecessary. The SDM provided by the CEAs ensures that the operators can respond promptly to unexpected increases in core reactivity. The Containment Structural Tests Report can be deleted since OPPD will continue to report conditions indicative of containment deterioration or degradation in accordance with 10 CFR 50.55a in the ISI Summary Report required by TS 5.9.3a.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Daniel S. Collins, Acting.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station (VCSNS), Unit No. 1, Fairfield County, South Carolina

Date of amendment request: June 22, 2005.

Description of amendment request: The proposed changes would revise the reactor coolant system heatup and cooldown curves located in Technical Specification (TS) section 3/4.4.9 to reflect the results of the last reactor vessel surveillance specimen that was removed from the reactor vessel and analyzed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise the P/T [pressure/temperature] limit curves to provide figures that reflect the results of the analysis performed on reactor vessel surveillance specimen Z. This analysis was performed using NRC approved methodology as documented in WCAP 14040–NP–A, Revision 4, utilizing the 1998 ASME [American Society of Mechanical Engineers] Code, Section XI through the 2000 addenda, Appendix G requirements. These curves provide the limits for operation of the Reactor Coolant System during heatup, cooldown, criticality, and hydrostatic testing. These curves are provided without instrument uncertainties included, however, the uncertainties are included in the curves provided in the plant operating procedures. The limits protect the reactor vessel from brittle fracture by separating the region of acceptable operation from the region where brittle fracture is postulated to occur. Failure of the reactor vessel is not a VCSNS design basis accident, and, in general, reactor vessel failure has a low probability of occurrence and is not considered in the safety analysis. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes revises the P/T limits curves, Section 3/4.4.9, to incorporate the results fo the analysis performed on reactor vessel specimen Z. There are no physical plant design changes or significant changes in any operating procedures. This change adjusts the heatup and cooldown curves to reflect the shift in nil-ductility reference temperature of the reactor vessel as a result of neutron embrittlement. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes revise the P/T limits curves, Section 3/4.4.9, to incorporate the results of the analysis performed on reactor vessel specimen Z. The new P/T curves ensure that the 10 CFR 50 Appendix G, requirements are not exceeded during normal operation including Reactor Coolant System transients during heatup, cooldown, criticality and hydrostatic testing. The new P/T curves were prepared, using approved industry methodology, for a projected reactor vessel neutron exposure of 56 EFPY [effective full-power year]. The proposed P/T limit curves reflect a shift of the limits in a conservative direction from the current requirements. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Evangelos C. Marinos.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of amendment request: July 29, 2005.

Brief description of amendments: The proposed amendments revised the technical specification (TS) testing frequency for the surveillance requirement (SR) 3.1.4.2, control rod scram time testing, from 120 days cumulative operation in MODE 1 to 200 days cumulative operation in MODE 1.

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in licensing amendment applications in the **Federal Register** on August 23, 2004 (69 FR 51864). The licensee affirmed the applicability of the model NSHC determination in its application dated July 29, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The frequency of surveillance testing is not an initiator of any accident previously evaluated. The frequency of surveillance testing does not affect the ability to mitigate any accident previously evaluated, as the tested component is still required to be operable. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change does not result in any new or different modes of plant operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change continues to test the control rod scram time to ensure the assumptions in the safety analysis are protected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Michael L. Marshall, Jr.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: August 18, 2005.

Brief description of amendment request: The proposed Technical Specification changes are needed to accommodate the replacement of the Reactor Building Emergency Sump suction inlet trash racks and screens with strainers.

*Date of publication of individual notice in **Federal Register:*** August 31, 2005 (70 FR 51852).

Expiration date of individual notice: September 30, 2005.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: January 27, 2005, revised by letter dated August 12, 2005.

Brief description of amendment request: The proposed amendment would allow the licensee to utilize a probabilistic methodology to determine the contribution to main steamline break leakage rates for the once-through steam generator (OTSG) from the tube end crack (TEC) alternate repair criteria described in Improved Technical Specification (ITS) 5.6.2.10.2.f and also involves a change to ITS 5.6.2.10.2.f to incorporate the basis of the proposed probabilistic methodology and the method and technical justification for projecting the TEC leakage that may develop during the next operating cycle following the inservice inspection of each OTSG.

*Date of publication of individual notice in **Federal Register:*** August 26, 2005 (70 FR 50424).

Expiration date of individual notice: September 26, 2005.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection 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 Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Duke Energy Corporation, et al., Docket Nos. 50–413, 50–414, 50–369, and 50–370, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina and McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina.

Date of application for amendments: July 7, 2005.

Brief description of amendments: The amendments revised the Technical Specifications TS 3.9.1, ''Boron Concentration,'' to clarify the technical requirements for boron concentration when the refueling canal and the refueling cavity are not connected to the reactor coolant system.

Date of issuance: September 1, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 231/213 and 226/221.

Renewed Facility Operating License Nos. NPF–35, NPF–52, NPF–9 and NPF–17: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** August 2, 2005 (70 FR 44401).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 1, 2005.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: December 20, 2004, as supplemented by letters dated June 6 and August 10, 2005.

Brief description of amendment: The Amendment revised the safety analysis report (SAR) to allow the licensee the use of a lifting tripod (a special lifting device) to remove and install the reactor vessel (RV) head and certain RV internals during refueling outages, using the reactor building polar crane.

Date of issuance: August 30, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance. The SAR changes shall be implemented in the next periodic update to the SAR in accordance with Paragraph 50.71(e) of Title 10 of the *Code of Federal Regulations.*

Amendment No.: 225.

Renewed Facility Operating License No. DPR–51: Amendment revised the SAR.

Date of initial notice in ***Federal Register:*** February 1, 2005 (70 FR 5242)

The supplements dated June 6 and August 10, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 2005.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: May 11, 2005.

Brief description of amendment: This amendment allows a one-time extension of the surveillance interval for the reactor vessel internals vent valves from September 2005 to March 2006.

Date of issuance: September 6, 2005.

Effective date: As of the date of issuance and shall be implemented within 14 days.

Amendment No.: 268.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications/License.

Date of initial notice in ***Federal Register:*** July 5, 2005 (70 FR 38719).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 2005.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: December 20, 2004, as supplemented by letter dated April 6, 2005.

Brief description of amendment: This amendment revised Technical Specification (TS) 3/4.9.2, ''Refueling Operations—Instrumentation.'' Specifically, the changes revised TS 3/4.9.2 concerning source range flux monitors to be more consistent with improved Standard Technical Specifications. The changes achieve consistency with corresponding requirements in NUREG–1430, ''Standard Technical Specifications Babcock and Wilcox Plants,'' Revision 3, dated June 2004, with exceptions to account for plant-specific design differences and retention of current licensing basis requirements and commitments.

Date of issuance: September 12, 2005.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 269.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 15, 2005 (70 FR 7765). The supplement dated April 6, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally notice, and did not change the NRC staff original proposed no significant hazards consideration determination as published in the **Federal Register** on February 15, 2005 (70 FR 7765).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 2005.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: July 8, 2004.

Brief description of amendment: The amendment deletes one-time use footnotes that have expired or have already been used from the Crystal River Unit 3 (CR–3) Improved Technical Specifications (ITS). Specifically, ITS 3.7.9, ''Nuclear Services Seawater System'' and ITS 3.8.1, ''AC Sources—Operating (Emergency Diesel Generator)'' notes are removed. These changes are administrative in nature and do not alter any operating license requirements.

Date of issuance: September 6, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 220.

Facility Operating License No. DPR–72: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 3, 2004 (69 FR 46585).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 2005.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: September 21, 2004, as supplemented by letters dated March 18, April 7, May 6, and August 10, 2005.

Brief description of amendments: The amendments the 69 kV offsite power circuit limiting conditions for operation action statements. Add a license condition to extend the required action completion time for an inoperable alternate offsite power source (69 kV circuit) from the current 72 hours to 14 days on a one-time basis.

Date of issuance: September 9, 2005.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment Nos.: 289, 271.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 26, 2004 (69 FR 62476)

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 9, 2005.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: September 27, 2004, as supplemented by letter dated August 2, 2005.

Brief description of amendments: The amendments revised Technical

Specifications (TSs) related to the reactor coolant pump flywheel inspection program by increasing the inspection interval to 20 years.

Date of issuance: September 9, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 265 and 247.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the TSs.

Date of initial notice in ***Federal Register:*** March 29, 2005 (70 FR 15945). The licensee's supplement dated August 2, 2005, did not change the scope of the proposed amendment as described in the original notice of proposed action published in the **Federal Register**, and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 9, 2005.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: August 26, 2004, as supplemented by letter dated July 18, 2005.

Brief description of amendments: The amendments revise the following Technical Specifications (TSs): TS 4.2.1, ''Fuel Assemblies,'' adds reference to ZIRLO™ clad fuel and filler rods; and TS 5.7.1.5, ''Core Operating Limits Report (COLR),'' adds the following references to the list of analytical methods used to determine the core operating limits: ''Calculative Methods for the CE Nuclear Power Large Break LOCA [loss-of-coolant accident] Evaluation Model,'' CENPD–132, Supplement 4–P–A, August 2000, and ''Implementation of ZIRLO™ Cladding Material in CE Nuclear Power Fuel Assembly Designs,'' CENPD–404–P–A, November 2001. These changes were requested to implement ZIRLO™ fuel rod cladding material into the fuel design for San Onofre Nuclear Generating Station, Units 2 and 3.

Date of issuance: September 14, 2005.

Effective date: As of the date of issuance, and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 2–199; Unit 3–190.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 28, 2004 (69 FR 57991).

The supplemental letter dated July 18, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 14, 2005.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 27, 2005.

Brief description of amendments: The amendments revised the applicability of Technical Specification (TS) 3.4.3, Functional Unit 18.A, ''Turbine Trip, Low Fluid Oil Pressure,'' and TS Functional Unit 18.B, ''Turbine Trip, Turbine Stop Valve Closure,'' by altering Table 3.3–1, ''Reactor Trip System Instrumentation,'' and Table 4.3–1, ''Reactor Trip System Instrumentation Surveillance Requirements.'' The change adds a footnote that indicates that the Mode 1 applicability is limited to operation above the P–9 (50 percent rated thermal power) interlock setpoint value. Additionally, the action for an inoperable turbine stop valve closure channel is revised to be consistent with the design of this function. Finally, an option is added to permit a reduction in thermal power to below the P–9 interlock within 10 hours for an inoperable turbine stop valve closure channel.

Date of issuance: September 2, 2005.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 304 and 294.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the technical specifications.

Date of initial notice in ***Federal Register:*** July 5, 2005 (70 FR 38722).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 2, 2005.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an

opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection 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/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner 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.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. *Technical*—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. *Environmental*—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. *Miscellaneous*—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

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. Since the Commission has

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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 the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or 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(a)(1)(i)–(viii).

Energy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: July 21, 2005, as supplemented by letters dated August 4 and August 26, 2005. The supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

Description of amendment request: To incorporate new Arkansas Nuclear One, Unit 2, Technical Specifications in support of dry cask loading operations in the spent fuel pool. The amendment ensures subcritical conditions are maintained in the spent fuel pool during dry cask loading operations by relying on realistically conservative fuel burnup credit.

Date of issuance: September 6, 2005.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 261.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (70 FR 48196, published August 16, 2005). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by November 4, 2005, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated September 6, 2005.

Attorney for licensee: Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Section Chief: David Terao.

Dated at Rockville, Maryland, this 16th day of September 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–19028 Filed 9–26–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

In the Matter of Certain Panoramic and Underwater Irradiators Authorized to Possess Greater than 370 Terabecquerels (10,000 Curies) of Byproduct Material in the Form of Sealed Sources, and All Other Persons Who Obtain Safeguards Information Described Herein; Order Imposing Compensatory Measures and Requirements for the Protection of Certain Safeguards Information (Effective Immediately)

I

The Licensees identified in Attachment 1 to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954 and 10 CFR Part 36 or comparable Agreement State regulations by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State authorizing possession of greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources either in panoramic irradiators that have dry or wet storage of the sealed sources or in underwater irradiators in which both the source and the product being irradiated are under water. Commission regulations at 10 CFR 20.1801 or equivalent Agreement State regulations, require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR 20.1802 or equivalent Agreement States regulations, require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and license requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by Licensees as prudent measures to address the current threat environment. Therefore, the Commission is imposing the requirements, as set forth in Attachment 2, on all Licensees identified in

Attachment 1 of this Order [1] who currently possess, or have near term plans to possess, greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that Licensees may have already initiated many measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe use and storage of the sealed sources.

Although the additional security measures implemented by the Licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. The security measures contained in Attachment 2 of this Order contain safeguards information and will not be released to the public. The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of safeguards information. Section 147 of the Atomic Energy Act of 1954, as amended, grants the Commission explicit authority to ''issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information * * *'' This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities.

This Order imposes requirements for the protection of Safeguards Information in the hands of any person [2] whether or not a licensee or applicant of the Commission, who produces, receives, or acquires Safeguards Information. Licensees, and all persons who produce, receive, or acquire Safeguards Information, must ensure proper handling and protection of safeguards information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of safeguards information contained in Attachment 3. The Commission hereby provides notice that it intends to treat all violations of the requirements contained in Attachment 3, applicable to the handling and unauthorized disclosure of safeguards information as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States. Access to safeguards information is limited to those persons who have established the need to know the information, and are considered to be trustworthy and reliable. A need to know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment. Licensees and all other persons who obtain Safeguards Information must ensure that they develop, maintain and implement strict policies and procedures for the proper handling and unauthorized disclosure of safeguards information in accordance with the requirements in Attachment 3. All licensees must ensure that all contractors whose employees may have access to safeguards information either adhere to the licensee's policies and procedures on safeguards information or develop, maintain and implement their own acceptable policies and procedures, but the licensees remain responsible for the conduct of their contractors. The policies and procedures necessary to ensure compliance with applicable requirements contained in Attachment 3 must address, at a minimum, the following: the general performance requirement that each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure; protection of safeguards information at fixed sites, in use and in storage, and while in transit; inspections, audits and evaluations; correspondence containing safeguards information; access to safeguards information; preparation, marking, reproduction and destruction of documents; external transmission of documents; use of automatic data processing systems; and removal of the Safeguards Information category.

In order to provide assurance that the Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all Licensees identified in Attachment 1 to this Order shall implement the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, and 10 CFR Part 36, *it is hereby ordered, effective immediately*, that all licensees identified in Attachment 1 to this Order, and all other persons who produce, receive, or acquire the compensatory measures identified in Attachment 2 or any related safeguards information, shall comply with the requirements in Attachment 3. In addition, all licensees identified in Attachment 1 to this Order shall comply with the requirements of this Order as follows:

A. The licensees shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order. The licensee shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by March 16, 2006, or the first day that greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources is possessed, which ever is later.

B. 1.The Licensee shall, within twenty-five (25) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State

[1] Attachment 1 contains sensitive information and Attachment 2 contains SAFEGUARDS INFORMATION and will not be released to the public.

[2] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department, except that the Department shall be considered a person with respect to those facilities of the Department specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

B.1. If the Licensee considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, within twenty-five (25) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. The Licensee shall, within twenty-five (25) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachment 2.

2. The Licensee shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding any provisions of the Commission's or Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this order shall be maintained until the Commission determines otherwise.

Licensee response to Conditions B.1, B.2, C.1, and C.2 above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee submittals that contain specific physical protection or security information considered to be safeguards information shall be put in a separate enclosure or attachment and, marked as ''SAFEGUARDS INFORMATION—MODIFIED HANDLING'' and mailed (no electronic transmittals; *i.e.*, no e-mail or FAX) to the NRC in accordance with Attachment 3.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty-five (25) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty-five (25) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 16th day of September, 2005.

For the Nuclear Regulatory Commission

Margaret V. Federline,

Acting Director, Office of Nuclear Material Safety and Safeguards.

Attachment 3—Modified Handling Requirements for the Protection of Certain Safeguards Information (SGI–M)

General Requirement

Information and material that the U.S. Nuclear Regulatory Commission (NRC) determines are safeguards information must be protected from unauthorized disclosure. In order to distinguish information needing modified protection requirements from the safeguards information for reactors and fuel cycle facilities that require a higher level of protection, the term ''Safeguards Information-Modified Handling'' (SGI–M) is being used as the distinguishing marking for certain materials licensees. Each person who produces, receives, or acquires SGI–M shall ensure that it is protected against unauthorized disclosure. To meet this requirement, licensees and persons shall establish and maintain an information protection system that includes the measures specified below. Information protection procedures employed by State and local police forces are deemed to meet these requirements.

Persons Subject to These Requirements

Any person, whether or not a licensee of the NRC, who produces, receives, or acquires SGI–M is subject to the requirements (and sanctions) of this document. Firms and their employees that supply services or equipment to materials licensees would fall under this requirement if they possess facility SGI–M. A licensee must inform contractors and suppliers of the existence of these requirements and the need for proper protection. (See more under Conditions for Access.)

State or local police units who have access to SGI–M are also subject to these requirements. However, these organizations are deemed to have adequate information protection systems. The conditions for transfer of information to a third party, *i.e.*,

need-to-know, would still apply to the police organization as would sanctions for unlawful disclosure. Again, it would be prudent for licensees who have arrangements with local police to advise them of the existence of these requirements.

Criminal and Civil Sanctions

The Atomic Energy Act of 1954, as amended, explicitly provides that any person, ''whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act.'' Section 147a. of the Act. Furthermore, willful violation of any regulation or order governing safeguards information is a felony subject to criminal penalties in the form of fines or imprisonment, or both. See sections 147b. and 223 of the Act.

Conditions for Access

Access to SGI–M beyond the initial recipients of the order will be governed by the background check requirements imposed by the order. Access to SGI–M by licensee employees, agents, or contractors must include both an appropriate need-to-know determination by the licensee, as well as a determination concerning the trustworthiness of individuals having access to the information. Employees of an organization affiliated with the licensee's company, *e.g.*, a parent company, may be considered as employees of the licensee for access purposes.

Need-to-Know

Need-to-know is defined as a determination by a person having responsibility for protecting SGI–M that a proposed recipient's access to SGI–M is necessary in the performance of official, contractual, or licensee duties of employment. The recipient should be made aware that the information is SGI–M and those having access to it are subject to these requirements as well as criminal and civil sanctions for mishandling the information.

Occupational Groups

Dissemination of SGI–M is limited to individuals who have an established need-to-know and who are members of certain occupational groups. These occupational groups are:

1. An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government;
2. A member of a duly authorized committee of the Congress;
3. The Governor of a State or his designated representative;
4. A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;
5. A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies; or
6. A person to whom disclosure is ordered pursuant to Section 2.744(e) of Part 2 of part 10 of the Code of Federal Regulations.
7. State Radiation Control Program Directors (and State Homeland Security Directors) or their designees.

In a generic sense, the individuals described above in (II) through (VII) are considered to be trustworthy by virtue of their employment status. For non-governmental individuals in group (I) above, a determination of reliability and trustworthiness is required. Discretion must be exercised in granting access to these individuals. If there is any indication that the recipient would be unwilling or unable to provide proper protection for the SGI–M, they are not authorized to receive SGI–M.

Information Considered for Safeguards Information Designation

Information deemed SGI–M is information the disclosure of which could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials or facilities subject to NRC jurisdiction.

SGI–M identifies safeguards information which is subject to these requirements. These requirements are necessary in order to protect quantities of nuclear material significant to the health and safety of the public or common defense and security.

The overall measure for consideration of SGI–M is the usefulness of the information (security or otherwise) to an adversary in planning or attempting a malevolent act. The specificity of the information increases the likelihood that it will be useful to an adversary.

Protection While in Use

While in use, SGI–M shall be under the control of an authorized individual. This requirement is satisfied if the SGI–M is attended by an authorized individual even though the information is in fact not constantly being used. SGI–M, therefore, within alarm stations, continuously manned guard posts or ready rooms need not be locked in file drawers or storage containers.

Under certain conditions the general control exercised over security zones or areas would be considered to meet this requirement. The primary consideration is limiting access to those who have a need-to-know. Some examples would be:

Alarm stations, guard posts and guard ready rooms;

Engineering or drafting areas if visitors are escorted and information is not clearly visible;

Plant maintenance areas if access is restricted and information is not clearly visible;

Administrative offices (*e.g.*, central records or purchasing) if visitors are escorted and information is not clearly visible;

Protection While in Storage

While unattended, SGI–M shall be stored in a locked file drawer or container. Knowledge of lock combinations or access to keys protecting SGI–M shall be limited to a minimum number of personnel for operating purposes who have a ''need-to-know'' and are otherwise authorized access to SGI–M in accordance with these requirements. Access to lock combinations or keys shall be strictly controlled so as to prevent disclosure to an unauthorized individual.

Transportation of Documents and Other Matter

Documents containing SGI–M when transmitted outside an authorized place of use or storage shall be enclosed in two sealed envelopes or wrappers. The inner envelope or wrapper shall contain the name and address of the intended recipient, and be marked both sides, top and bottom with the words ''Safeguards Information-Modified Handling.'' The outer envelope or wrapper must be addressed to the intended recipient, must contain the address of the sender, and must not bear any markings or indication that the document contains SGI–M.

SGI–M may be transported by any commercial delivery company that provides nationwide overnight service with computer tracking features, U.S. first class, registered, express, or certified mail, or by any individual authorized access pursuant to these requirements.

Within a facility, SGI–M may be transmitted using a single opaque envelope. It may also be transmitted within a facility without single or double wrapping, provided adequate measures are taken to protect the material against unauthorized disclosure. Individuals transporting SGI–M should retain the documents in their personal possession at all times or ensure that the information is appropriately wrapped and also secured to preclude compromise by an unauthorized individual.

Preparation and Marking of Documents

While the NRC is the sole authority for determining what specific information may be designated as ''SGI–M,'' originators of documents are responsible for determining whether those documents contain such information. Each document or other matter that contains SGI–M shall be marked ''Safeguards Information-Modified Handling'' in a conspicuous manner on the top and bottom of the first page to indicate the presence of protected information. The first page of the document must also contain (i) the name, title, and organization of the individual authorized to make an SGI–M determination, and who has determined that the document contains SGI–M, (ii) the date the document was originated or the determination made, (iii) an indication that the document contains SGI–M, and (iv) an indication that unauthorized disclosure would be subject to civil and criminal sanctions. Each additional page shall be marked in a conspicuous fashion at the top and bottom with letters denoting ''Safeguards Information-Modified Handling.''

In addition to the ''Safeguards Information—Modified Handling'' markings at the top and bottom of page, transmittal letters or memoranda which do not in themselves contain SGI–M shall be marked to indicate that attachments or enclosures contain SGI–M but that the transmittal does not (*e.g.*, ''When separated from SGI–M enclosure(s), this document is decontrolled'').

In addition to the information required on the face of the document, each item of

correspondence that contains SGI–M shall, by marking or other means, clearly indicate which portions (*e.g.*, paragraphs, pages, or appendices) contain SGI–M and which do not. Portion marking is not required for physical security and safeguards contingency plans.

All documents or other matter containing SGI–M in use or storage shall be marked in accordance with these requirements. A specific exception is provided for documents in the possession of contractors and agents of licensees that were produced more than one year prior to the effective date of the order. Such documents need not be marked unless they are removed from file drawers or containers. The same exception applies to old documents stored away from the facility in central files or corporation headquarters.

Since information protection procedures employed by state and local police forces are deemed to meet NRC requirements, documents in the possession of these agencies need not be marked as set forth in this document.

Removal From SGI–M Category

Documents containing SGI–M shall be removed from the SGI–M category (decontrolled) only after the NRC determines that the information no longer meets the criteria of SGI–M. Licensees have the authority to make determinations that specific documents *which they created* no longer contain SGI–M information and may be decontrolled. Consideration must be exercised to ensure that any document decontrolled shall not disclose SGI–M in some other form or be combined with other unprotected information to disclose SGI–M. The authority to determine that a document may be decontrolled may be exercised only by, or with the permission of, the individual (or office) who made the original determination. The document should indicate the name and organization of the individual removing the document from the SGI–M category and the date of the removal. Other persons who have the document in their possession should be notified of the decontrolling of the document.

Reproduction of Matter Containing SGI–M

SGI–M may be reproduced to the minimum extent necessary consistent with need without permission of the originator. Newer digital copiers which scan and retain images of documents represent a potential security concern. If the copier is retaining SGI–M information in memory, the copier cannot be connected to a network. It should also be placed in a location that is cleared and controlled for the authorized processing of SGI–M information. Different copiers have different capabilities, including some which come with features that allow the memory to be erased. Each copier would have to be examined from a physical security perspective.

Use of Automatic Data Processing (ADP) Systems

SGI–M may be processed or produced on an ADP system provided that the system is assigned to the licensee's or contractor's facility and requires the use of an entry code/password for access to stored information. Licensees are encouraged to process this information in a computing environment that has adequate computer security controls in place to prevent unauthorized access to the information. An ADP system is defined here as a data processing system having the capability of long term storage of SGI–M. Word processors such as typewriters are not subject to the requirements as long as they do not transmit information off-site. (Note: if SGI–M is produced on a typewriter, the ribbon must be removed and stored in the same manner as other SGI–M information or media.) The basic objective of these restrictions is to prevent access and retrieval of stored SGI–M by unauthorized individuals, particularly from remote terminals. Specific files containing SGI–M will be password protected to preclude access by an unauthorized individual. The National Institute of Standards and Technology (NIST) maintains a listing of all validated encryption systems at *http://csrc.nist.gov/cryptval/140–1/1401val.htm.* SGI–M files may be transmitted over a network if the file is encrypted. In such cases, the licensee will select a commercially available encryption system that NIST has validated as conforming to Federal Information Processing Standards (FIPS). SGI–M files shall be properly labeled as ''Safeguards Information-Modified Handling'' and saved to removable media and stored in a locked file drawer or cabinet.

Telecommunications

SGI–M may not be transmitted by unprotected telecommunications circuits except under emergency or extraordinary conditions. For the purpose of this requirement, emergency or extraordinary conditions are defined as any circumstances that require immediate communications in order to report, summon assistance for, or respond to a security event (or an event that has potential security significance).

This restriction applies to telephone, telegraph, teletype, facsimile circuits, and radio. Routine telephone or radio transmission between site security personnel, or between the site and local police, should be limited to message formats or codes that do not disclose facility security features or response procedures. Similarly, call-ins during transport should not disclose information useful to a potential adversary. Infrequent or non-repetitive telephone conversations regarding a physical security plan or program are permitted provided that the discussion is general in nature.

Individuals should use care when discussing SGI–M at meetings or in the presence of others to insure that the conversation is not overheard by persons not authorized access. Transcripts, tapes or minutes of meetings or hearings that contain SGI–M should be marked and protected in accordance with these requirements.

Destruction

Documents containing SGI–M should be destroyed when no longer needed. They may be destroyed by tearing into small pieces, burning, shredding or any other method that precludes reconstruction by means available to the public at large. Piece sizes one half inch or smaller composed of several pages or documents and thoroughly mixed would be considered completely destroyed.

[FR Doc. E5–5188 Filed 9–26–05; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Sunshine Act Meetings

AGENCY: Postal Rate Commission (PRC).

TIME AND DATE: Convening on Wednesday, October 5, 2005 at 2:30 p.m. and continuing daily thereafter as needed, after 9:30 a.m., until completed.

PLACE: Commission conference room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Recommendations in Docket No. R2005–1.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 202–789–6820.

Dated: September 22, 2005.

Steven W. Williams,

Secretary.

[FR Doc. 05–19310 Filed 9–22–05; 4:41 pm]

BILLING CODE 7710–FW–M

POSTAL RATE COMMISSION

Sunshine Act; Briefing on Commission Functions and Procedures

AGENCY: Postal Rate Commission.

ACTION: Notice of briefing.

SUMMARY: The Commission will serve as a general host for a visiting delegation from PostEurop on October 11 through 14, 2005. The agenda includes briefings on Commission operations, functions and activities, as well as related issues, such as postal reform, efficient component pricing, negotiated service agreements, worksharing, and distinctions between domestic and European postal models. It also includes Postal Service briefings, a postal facility tour, meetings with members of Congress and their staff, and discussions with mailers.

DATES: October 11 through 14, 2005.

ADDRESSES: Postal Rate Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

Dated: September 22, 2005.

Steven W. Williams,

Secretary.

[FR Doc. 05–19311 Filed 9–22–05; 4:41 pm]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 70 FR 54970, September 19, 2005.

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional Meeting.

An additional Closed Meeting has been scheduled for Friday, September 23, 2005 at 9 a.m.

Commissioners and certain staff members who have an interest in the matter will attend the Closed Meeting.

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) (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10) permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting will be: Institution and settlement of an injunctive action.

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 22, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–19316 Filed 9–23–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28032]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

September 19, 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 14, 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 14, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation, et al. (70–10324)

Entergy Corporation (''Entergy''), a Delaware corporation and registered holding company, and its wholly-owned subsidiaries Entergy Louisiana, Inc., (''Company''), a Louisiana corporation, and Entergy Services, Inc. (''ESI''), a Delaware corporation all located at 639 Loyola Avenue, New Orleans, LA 70113, (together, ''Applicants''), have filed an application-declaration (''Application'') with the Commission under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 13(b) of the Act and rules 42, 43, 45, 46, 54, 87, 90 and 91 under the Act.

Introduction and Background Information

Description of the Company

The Company, which is a direct subsidiary of Entergy, owns and operates a retail electric utility business in certain parishes in the state of Louisiana. The Company, together with Entergy's other domestic retail electric utility subsidiaries (*i.e.*, Entergy Arkansas, Inc. (''EAI''), Entergy Gulf States, Inc. (''EGSI''), Entergy Mississippi, Inc. (''EMI'') and Entergy New Orleans Inc. (''ENOI'')), collectively provide electric service to approximately 2,662,000 customers in portions of Arkansas, Louisiana (including the City of New Orleans), Mississippi and Texas. As of December 31, 2004, the Company has approximately 662,000 electric utility customers and owns or leases approximately 5363 MWs of gas/oil and nuclear generating capacity in Louisiana. In addition, in June 2005, the Company acquired a 718 MW power plant from Perryville Energy Partners, LLC, located near Monroe, Louisiana. Among its other assets, the Company also holds (i) a 33% equity ownership interest in SFI (''SFI Ownership Interest''), a fuel procurement company formed in 1972 as a jointly-owned nonutility subsidiary of Entergy's four original domestic retail operating companies (*i.e.*, EAI, EMI, ENOI and the Company), as well as (ii) $14,223,000 in notes receivable from SFI (''SFI Notes Receivable'') relating to loans provided by the Company and the other original operating companies for the purpose of financing SFI's operations.

Reason for Proposed Transactions

Under the Louisiana Revised Statutes Section 47.601A, the Company is obligated to pay corporation franchise taxes in the state of Louisiana. These taxes impose a substantial financial obligation on the Company and its ratepayers. For example, the Company's 2005 Louisiana franchise tax liability was $10.3 million. Louisiana law requires every Louisiana corporation (and every non-Louisiana corporation that qualifies to do business in Louisiana or is doing business in Louisiana) to pay this tax. However, Louisiana law does not subject limited liability companies to this tax. For this reason, in Docket No. U–20925 (RRF 2004) of the Louisiana Public Service Commission (''LPSC''), the LPSC staff recommended that the Company review the feasibility of restructuring its business form into a limited liability company in order to eliminate the Company's obligation to pay franchise taxes and the Company agreed to this recommendation. Applicants state that the proposed restructuring would implement the LPSC staff recommendation in Docket No. U–20925. Upon the approval of the proposed restructuring, the resulting decrease in the Company's jurisdictional revenue requirement (which consists of the anticipated franchise tax savings less the costs associated with the restructuring, amortized over an appropriate period of time) would be fully reflected in the Company's rates.

Specifically, the Company proposes to restructure itself, through a two step process, into a new company, Holdings, and (i) a newly formed direct subsidiary of Holdings, referred to herein as ELL, which at the time of the Merger will become a public utility company, succeed to all of the Company's utility operations and be allocated substantially all of Holding's assets and

other properties (including all of the utility assets), as well as assume substantially all of the obligations of Holdings in effect prior to the Merger (including all of its debt securities and leases) and (ii) another newly formed subsidiary of Holdings, ELP, which at the time of the Merger, will be allocated certain undeveloped real property of the Company, known as the St. Rosalie and Wilton Plant Sites (''Plant Sites''), as well as the SFI Ownership Interest and SFI Notes Receivable, and assume any obligations/liabilities relating to these assets. Applicants propose that Holdings become an intermediate holding company and, following the Merger, register as a holding company under the Act.

Applicants propose that Holdings serve as the parent of ELL, since Entergy would itself be exposed to Louisiana franchise tax liability in the event that ELL was to become a direct Entergy subsidiary. Applicants also propose that ELP be formed to hold the Plant Sites, the SFI Ownership Interest and the SFI Notes Receivable since (i) Holdings cannot retain any real property or other physical assets without also becoming subject to Louisiana franchise tax liability and (ii) Holdings would become subject to the jurisdiction of the LPSC if it retains the SFI Ownership Interest and SFI Notes Receivable, which currently are assets of the Company in rate base.

Proposed Restructuring

Conversion of the Company to Holdings, a Texas Corporation

The first step in the proposed restructuring is to change the place of incorporation of the Company from Louisiana to Texas. Since the Texas merger statute is only available for use by Texas corporations, this step allows the use of the flexible merger provisions of Article 5.01 of the Texas Business Corporation Act (''TBCA'') in the formation of ELL and ELP. Section 164 of the Louisiana Business Corporation Law and Article 5.17 of the TBCA permit a Louisiana corporation to convert to a Texas corporation. Under these statutes, the Company will adopt a Plan of Conversion under which the Company will continue its existence under the name of Entergy Louisiana, Inc., a Texas corporation (''Holdings''). Under the Plan of Conversion, all of the Common Stock and Preferred Stock of the Company will remain outstanding as the Common Stock and Preferred Stock of Holdings and the holders of these securities will have the same rights and interests in Holdings as they had in the Company immediately prior to the effective date of the Merger.[1] All of the ownership rights and interests in the real estate and other assets of the Company will continue to be owned by Holdings, subject to existing liens and encumbrances. Similarly, all liabilities and obligations of the Company will continue to be liabilities and obligations of Holdings, without impairment or diminution. It is intended that the Conversion of the Company to a Texas corporation under the Plan will qualify as a tax-free reorganization under Internal Revenue Code (''IRC'') Section 368(a)(1)(F), and not result in the imposition of any federal income tax.

The Merger

Applicants state that the second and final step in the proposed restructuring is to form ELL, the new Texas limited liability company that will own and operate the Company's retail electric business, and ELP, the new Texas limited liability company, will own the Plant Sites, the SFI Ownership Interest and the SFI Notes Receivable. Under Article 5.01 of the TBCA, Holdings will enter into a Plan of Merger (''Merger''), under which Holdings will continue to exist and ELL and ELP will be formed. Following the Merger, all of the Common Stock and Preferred Stock of Holdings will continue to be outstanding and will continue to be owned by the persons who owned these securities immediately prior to the Merger.[2] Also (i) 146,970,607 units of Common Membership Interests of ELL (''ELL Common Units''), representing all of the issued and outstanding Common Membership Units of ELL and (ii) 100 units of Common Membership Interests of ELP (''ELP Common Units''), representing all of the issued and outstanding Common Membership Units of ELP, will be issued and allocated to Holdings. Substantially all of the real estate and other property owned, leased and claimed by Holdings immediately prior to the Merger will be allocated to and vested in ELL.[3] However, Holdings will transfer to ELP the Plant Sites, the SFI Ownership Interest, the SFI Notes Receivable and working capital in an amount sufficient to fund the day-to-day business operations of ELP (''ELP Assets''). The allocation of property to ELL under the merger provisions of the TBCA is intended to be tax free under I.R.C. Section 351. The allocation to ELP also will be tax free, because ELP will be a disregarded entity for federal income tax purposes.

Applicants state that all liabilities and obligations of Holdings immediately prior to the Merger will be allocated to ELL, except liabilities and obligations relating to the ELP Assets, which will be allocated to ELP.[4] Holdings will have

[1] The Company has outstanding 146,970,607 shares of Common Stock, without par value, all of which are held by Entergy. The Company's outstanding Preferred Stock consists of 635,000 shares of Preferred Stock, with a par value of $100 per share, issued in eight series and 1,480,000 shares of Preferred Stock, with a par value of $25 per share.

[2] Applicants state that Entergy, as the holder of all of the Common Stock of Holdings, will consent to the Merger. While the Articles of Incorporation of the Company (and of Holdings) provide/will provide that the holders of at least two-thirds of the outstanding shares of Preferred Stock must also be obtained in order to merge with another corporation or to sell or otherwise dispose of all or substantially all of the assets of the Company, such approval is not required in the event that the transaction is approved by the Commission under the Act. Therefore, Applicants state that, assuming approval is granted by the Commission, the consent of the holders of the Company's Preferred Stock is not required to consummate the Merger.

[3] The assets that will be allocated to ELL include approximately:

(i) 6,081 MWs of electric generating capacity;

(ii) 2,700 miles of transmission lines and associated transmission facilities and

(iii) 20,362 pole miles of distribution lines and related facilities serving approximately 662,000 customers in Louisiana.

[4] Applicants state that the significant liabilities and obligations to be allocated to ELL include (as of December 31, 2004):

(i) $490 million of outstanding first mortgage bonds issued under the Company's Mortgage and Deed of Trust, dated April 1, 1944, as amended;

(ii) $415 million of pollution control revenue bonds, $232 million of which are secured by collateral first mortgage bonds;

(iii) approximately $248 million present value of future net minimum lease payments under the lease of a portion of Waterford 3;

(iv) lease payments relating to approximately $32 million of nuclear fuel and

(v) obligations under various power purchase and sale agreements, including the Unit Power Sales Agreement with System Energy Resources, Inc. (''System Energy''), various transmission service and interconnection agreements, and various fuel purchase and related agreements with SFI or non-affiliates, such as the Liquid Fuels Purchase Contract, between SFI, as Seller, and EAI, EMI, ENOI and the Company, as Buyers; the Nuclear Fuel and Fuel Services Agreement between SFI and certain of the System operating companies (including the Company) and System Energy; and the Fuel Lease with River Fuel Company #2, Inc., providing for the lease of nuclear fuel for Waterford 3.

The agreements governing these obligations do not prohibit the allocation of these obligations to ELL. The Company will obtain all required consents of parties to these agreements.

Applicants state that while the Plan of Merger also provides that the liabilities and obligations associated with the Plant Sites, the SFI Ownership Interest and the SFI Notes Receivable will be allocated to ELP, there are not expected to be any obligations associated with the Plant Sites, other than the payment of related taxes and any maintenance expenses, and there are no outstanding obligations/liabilities associated with the ownership of the SFI related assets. Following the Merger, SFI will continue to provide fuel procurement services to ELL on the same basis as such services are currently provided to the

Continued

continuing liability for those liabilities and obligations allocated to ELL and ELP at the time of the Merger as provided by law, but not for any obligation or liability incurred by ELL or ELP after the Merger.[5] Holdings also will retain an amount of working capital sufficient to meet its business needs. ELL will succeed to and assume all of the Company's jurisdictional tariffs, rate schedules and service agreements, as well as all of the Company's franchises, and will provide electric service to the Company's customers without interruption. ELL will also be the successor to the Company with respect to the commitments and authorizations set forth in the various Commission orders and underlying applications, including those relating to such matters as the conduct of the Company's utility business or the sale of utility assets, the Company's transactions with associate companies and its financing transactions (except to the extent otherwise provided in this Application).

Management of ELL and ELP

Under the proposed Articles of Organization and Regulations of Entergy Louisiana, LLC and the proposed Articles of Organization and Regulations of Entergy Louisiana Properties, LLC, ELL and ELP will each be managed under the authority of managers, each of which will be called a Director. Directors will act by majority vote either at a meeting or without a meeting. Holders of ELL Common Units or ELP Common Units, as applicable (as well as holders of ''Preferred Units'' of ELL (as defined below), to the extent provided below) will have the right to vote in the election of Directors and on other matters requiring approval of the members of these entities. The Directors, by majority vote, will elect a president, who will also serve as the chief executive officer, as well as a treasurer, a secretary, one or more vice presidents and other officers.

Proposed Financing Transactions

Financing Transactions of Holdings

As a result of the Merger, Holdings will become a holding company and will register under section 5 of the Act. Section 11(b)(2) of the Act requires that the Commission take action to ensure that ''the corporate structure or continued existence of any company in the holding company system does not unduly complicate the structure or inequitably distribute voting power among security holders.'' Consistent with this requirement, Applicants propose that, subsequent to the Merger, no outside party have an interest in Holdings and that Holdings have no outside security holders, lenders or customers (except as provided above with respect to Holdings' continuing liability as to securities issued or other obligations incurred and outstanding prior to the Merger). To effect this intent, within one year of the Merger effective date, Holdings proposes to redeem or repurchase and retire the preferred stock (''Preferred Stock'') previously issued by the Company, which will remain outstanding after the effective date of the Plans of Conversion and Merger. After the Preferred Stock has been redeemed, Holdings will amend its Articles of Incorporation to eliminate authority to issue Preferred Stock. Additionally, since the Plan of Merger provides that all outstanding short or long-term debt of the Company will be allocated to ELL and ELL will succeed to all of the Company's utility operations, Holdings will have no external debt holders or customers (except with respect to Holdings' continuing liability as to debt securities or customer obligations, which are outstanding prior to the Merger). Also, Entergy will continue to hold all of the outstanding Common Stock of Holdings. Applicants further propose that upon the effective date of the Merger, the Company's existing December 29, 2003 financing order (''Finance Order'') be terminated and that Holdings be authorized to participate in the Money Pool as a lender only, to the extent that it may, from time to time, have surplus funds. Inasmuch as Holdings is to be capitalized exclusively with equity and/or debt provided by Entergy, Holdings proposes to issue and sell equity or debt securities to Entergy from time to time through December 31, 2008 (''Authorization Period''),[6] up to an aggregate amount of $500 million. Any debt securities issued to Entergy under this authorization will be designed to parallel Entergy's effective cost of capital and will have maturities not exceeding 50 years. Entergy also may elect to make capital contributions or non-interest bearing open account advances to Holdings, as authorized under rule 45. Applicants state that in no event will Holdings borrow from Entergy for the purpose of making loans to associate companies under the Money Pool.

ELP Participation in Money Pool

As a result of the Merger, ELP will be formed to own the Plant Sites, the SFI Ownership Interest and the SFI Notes Receivable. Since ELP will not be engaging in any other business operations and is not expected to have any on-going obligations/liabilities other than the payment of taxes, any expenses relating to its ownership of the Plant Sites and routine expenses associated with record-keeping and corporate maintenance requirements, it is anticipated that ELP will have minimal financing needs. To satisfy these financing needs, Applicants request authorization for ELP to participate in the Money Pool as a borrower (as well as a lender), through the Authorization Period, on the same basis as the other participating companies. The aggregate principal amount of ELP's borrowings at any one time outstanding through the Money Pool will not exceed $50 million. Any loans by ELP to other participants through the Money Pool will be made from ELP's available funds. ELP will not borrow funds for the purpose of making loans to associate companies through the Money Pool. Applicants further request that Holdings be authorized to participate in the Money Pool as a lender only.

ELL Financing Transactions

Since ELL will be the successor to the Company's electric utility business, it will require authorization to issue debt and equity securities to provide financing to satisfy its working capital needs and for other general corporate purposes. Applicants state that the financing authorizations requested for ELL herein are substantially similar to the authorizations granted to the Company under the Finance Order. Upon the effective date of the Merger, Applicants request that the Finance Order be terminated and the financing authorizations requested for ELL herein will replace and supercede the authorizations granted under the Finance Order. In addition, as the successor to the Company, ELL proposes to succeed to the Company's existing authorization to issue short-term debt under the Money Pool Order. Specifically, under the Money Pool Order, ELL proposes to be authorized, through Authorization Period, to issue short-term debt, consisting of borrowings under the Money Pool or

Company and the other original Entergy operating companies, EAI, EMI and ENOI. As indicated above, the obligations associated with these services will be allocated to and assumed solely by ELL in its capacity as a customer of SFI.

[5] Under the Plan of Merger, ELL or ELP, as applicable, will reimburse Holdings for any liabilities or defense related expenses that Holdings incurs with respect to the liabilities and obligations, which are allocated to the entity.

[6] Although Applicants request that the Authorization Period be through December 31, 2008, because of the passage of the Energy Policy Act of 2005, which repeals the Act, the Authorization Period will be through February 8, 2006.

one or more credit agreements, the issuance of commercial paper, or other forms of short-term financing, up to an aggregate amount of $225 million. ELL proposes to be authorized to participate as a lender in the Money Pool to the extent of its available funds. Applicants also request authorization for ELL, from time to time through the Authorization Period, to enter into the following financing transactions:

(i) To issue and sell units of preferred membership interests (''Preferred Units'') and, directly or indirectly, through one or more financing subsidiaries (as described below), other forms of preferred or equity-linked securities (''Equity Interests''), up to a combined aggregate amount of $200 million;

(ii) To issue and sell from time to time first mortgage bonds (''First Mortgage Bonds'') and unsecured long-term indebtedness (''Long-term Debt''), in all cases having maturities of up to 50 years in a combined aggregate amount of up to $700 million;

(iii) In connection with the issuance of Equity Interests, to issue Notes (as defined below) to the extent of the related issuance of Equity Interests and Equity Contribution (as defined below);

(iv) To enter into arrangements for the issuance and sale from time to time of tax exempt bonds (''Tax-exempt Bonds''), in an aggregate principal amount of up to $420 million, for the financing or refinancing of certain pollution control facilities and/or solid waste disposal facilities and, in connection with the issuance and sale of these Tax-exempt Bonds, to issue and pledge collateral bonds (first mortgage bonds issued as collateral security for the tax-exempt bonds) (''Collateral Bonds'') in an aggregate principal amount of up to $470 million (this $470 million is not included in the $700 million referenced in (ii) above) and

(v) To acquire the equity securities of one or more Financing Subsidiaries (as defined below) and/or Special Purposes Subsidiaries (as defined below) and/or Partner Subs (as defined below), organized solely to facilitate financing, as discussed below; to guarantee the securities issued by the Financing Subsidiaries and/or Special Purpose Subsidiaries and to have the Financing Subsidiaries and/or Special Purposes Subsidiaries pay ELL, either directly or indirectly, dividends out of capital.

Entergy contemplates that the Preferred Units, Equity Interests, First Mortgage Bonds, Long-term Debt, and Tax-exempt Bonds (including Collateral Bonds, if any) would be issued and sold directly to one or more purchasers in negotiated transactions, or to one or more investment banking or underwriting firms or other entities who would resell these securities without registration under the Securities Act of 1933 (''Securities Act'') in reliance upon one or more applicable exemptions from registration thereunder, or to the public in transactions registered under the Securities Act either through underwriters selected by negotiation or competitive bidding or through selling agents, acting either as agent or as principal, for resale to the public either directly or through dealers.

Preferred Membership Interests and Equity Interests

Applicants propose that ELL issue and sell Preferred Units, as authorized by its proposed regulations.[7] It is anticipated that holders of the Preferred Units will be eligible to vote, together with the holders of the ELL Common Units, for the election of Directors and on other matters requiring approval of the members of ELL. As the sole holder of the ELL Common Units, Holdings will have no less than 75% of the combined voting power of the ELL Common Units and, if applicable, the Preferred Units, and so will have sufficient voting power to elect all Directors of ELL.[8] In addition, as is customary with preferred stock, the holders of the Preferred Units will be entitled to vote as a class on matters that may adversely affect their interests, such as changes in the terms of their Preferred Units, certain mergers and similar matters. In addition to Preferred Units, it is proposed that ELL have the flexibility to issue Equity Interests, directly or indirectly through one or more special purpose finance subsidiaries (including, specifically trust preferred securities), as described below.

Applicants propose that Preferred Units or Equity Interests may be issued in one or more series with rights, preferences and priorities, including those relating to redemption, as may be designed in the instrument creating the series, as determined by ELL's directors or an officer authorized thereby. Preferred Units or Equity Interests may be redeemable or may be perpetual in duration. Distributions on Preferred Units or Equity Interests, each of which may be issued at fixed or floating dividend or distribution rates, will be made periodically and to the extent that funds are legally available for this purpose, but may be made subject to terms which allow the user to defer dividend or distribution payments for specified periods.

First Mortgage Bonds

As previously discussed, under the Plan of Merger, substantially all of the Company's property, rights and obligations prior to the Merger will be allocated to and vested in ELL. This will include the Company's rights and obligations under the Company's Mortgage and Deed of Trust, dated as of April 1, 1944, to The Bank of New York (successor to Bank of Montreal Trust Company and the Chase National Bank of the City of New York) and Stephen J. Giurlando (successor to Mark F. McLaughlin, Z. George Klodnicki and Carl E. Buckley), as Trustees, as amended and supplemented by sixty supplemental indentures (''Supplemental Indentures''), each relating to one or more new series of First Mortgage Bonds (''Mortgage''). ELL may issue First Mortgage Bonds on the basis of unfunded net property additions and/or previously retired bonds as permitted or authorized by the Mortgage, as further supplemented by additional Supplemental Indenture(s).

First Mortgage Bonds: (i) May be subject to optional and/or mandatory redemption, in whole or in part, at par or at premiums above the principal amount thereof; (ii) may be entitled to mandatory or optional sinking fund provisions; (iii) may be issued at fixed or floating rates of interest; (iv) may provide for reset of the coupon pursuant to a remarketing arrangement; (v) may be called from existing investors by a third party; (vi) may be backed by a bond insurance policy and (vii) will have a maturity ranging from one year to 50 years. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to First Mortgage Bonds of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding (subject, however, in the case of interest rates, to the limits set forth below). In each Supplemental Indenture relating to a series of First Mortgage Bonds, ELL may covenant that, so long as any First Mortgage Bonds of the series remain outstanding, ELL will not pay any cash

[7] The Company, on behalf of ELL, may agree that ELL will sell Preferred Units and other securities prior to its formation, but the consummation of any sale shall be conditioned on the effectiveness of the Merger and of the Commission's authorization requested in this Application.

[8] The grant to the holders of the Preferred Units of the right to vote for Directors may require ELL to deconsolidate from Entergy for federal tax purposes. If ELL deconsolidates, then it will not be a party to the Entergy Corporation and Subsidiary Companies Intercompany Income Tax Consolidation Agreement, dated April 28, 1988, as amended, and Holdings will retain the benefits and obligations of the Agreement.

distributions on ELL Common Units, except from credits to retained earnings, plus a specified amount, plus any additional amounts approved by the Commission. However, ELL may determine not to include any provisions restricting its ability to pay distributions on ELL Common Units.

Long-Term Debt

ELL, directly or through a Financing Subsidiary, may also issue and sell from time to time long-term indebtedness. Long-term Debt of a particular series: (i) Will be unsecured; (ii) may be convertible into any other securities of ELL (except ELL Common Units); (iii) will have a maturity ranging from one year to 50 years; (iv) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at premiums above the principal amount thereof; (v) may be entitled to mandatory or optional sinking fund provisions; (vi) may provide for reset of the coupon pursuant to a remarketing arrangement; (vii) may be issued at fixed or floating rates of interest and (viii) may be called from existing investors by a third party.

The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to Long-term Debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding (subject, however, in the case of interest rates, to the limits set forth below).

Tax-Exempt Bonds

Applicants request authorization for ELL to enter into arrangements for the issuance by one or more governmental authorities (each, an ''Issuer'') on behalf of ELL of up to $420 million in aggregate principal amount of Tax-exempt Bonds (and, in connection therewith, authorization is also requested for ELL to issue up to $470 million in aggregate principal amount of ELL Collateral Bonds, which $470 million is not included in the $700 million authorization requested herein for First Mortgage Bonds and Long-term Debt), and it is further proposed that ELL may enter into one or more leases, subleases, installment sale agreements or other agreements and/or supplements and/or amendments thereto (collectively, the ''Facilities Agreement''), or to enter into one or more refunding agreements and possible supplements and/or amendments thereto (collectively, the ''Refunding Agreement'') with the respective Issuer(s) that will contemplate the issuance and sale by the Issuer(s) of one or more series of Tax-exempt Bonds in an aggregate principal amount of up to $420 million under one or more trust indentures and/or supplements thereto (individually and collectively, the ''Indenture'') between the Issuer(s) and one or more trustees. Under the terms of each Facilities Agreement and/or each Refunding Agreement, ELL will be obligated to make payments sufficient to provide for payment by the Issuer(s) of the principal or redemption price of, premium (if any) and interest on, and other amounts owing with respect to the Tax-exempt Bonds, together with related expenses.

The proceeds of the sale of Tax-exempt Bonds will be applied to financing, or refinancing tax-exempt bonds issued for the purpose of financing, certain ELL pollution control facilities and/or sewage or solid waste disposal facilities. Under the terms of each Facilities Agreement, ELL will agree to purchase, acquire, construct and install the facilities unless the facilities are already in operation. In addition, under the terms of the Facilities Agreement, the respective Issuer(s) may acquire by purchase from ELL the subject pollution control and/or sewage or solid waste disposal facilities that ELL will then repurchase from the Issuer(s).

The Tax-exempt Bonds of a particular series: (i) Will have a maturity ranging from one year to 40 years; (ii) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at premiums above the principal amount thereof; (iii) may be entitled to mandatory or optional sinking fund provisions; (iv) may provide for reset of the coupon pursuant to a remarketing arrangement; (v) may be issued at fixed or floating rates of interest; (vi) may be called from existing investors by a third party; (vii) may be backed by a municipal bond insurance policy; (viii) may be supported by credit support such as a bank letter of credit and reimbursement agreement; (ix) may be supported by a lien subordinate to the Mortgage on the facilities related to the Tax-exempt Bonds and (x) may be supported by the issuance and pledge of Collateral Bonds.

The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to Tax-exempt Bonds of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding (subject, however, in the case of interest rates, to the limits set forth below).

Dividend/Distribution and Interest Rate Parameters

Dividends/distributions and interest rates on the equity or debt securities proposed to be issued by ELL will be subject to certain limits. The dividend or distribution rate on any series of Preferred Units and Equity Interests or the interest rate on First Mortgage Bonds, Long-term Debt, Tax-exempt Bonds (including Collateral Bonds, if any) will not exceed, at the time of issuance, a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies, but in no event will: (i) The dividend/distribution rate (in the case of any equity securities issued at a fixed rate) exceed 500 basis points over the yield to maturity of a U.S. Treasury Security having a remaining term comparable to the term of the series; (ii) the interest rate (in the case of any debt securities issued at a fixed rate) exceed 500 basis points (or 400 basis points with respect to Tax-exempt Bonds and any related Collateral Bonds) over U.S. Treasury Securities having a remaining term comparable to the term of the securities or (iii) the dividend/distribution or interest rate exceed 500 basis points over the London Interbank Offering Rate (''LIBOR'') (or 400 basis points over LIBOR with respect to Tax-exempt Bonds or any related Collateral Bonds) for the relevant dividend/distribution or interest rate period in the case of any equity or debt securities issued at a floating rate.

In connection with the issuance of Equity Interests, Applicants request authorization for ELL to acquire, directly or indirectly, the equity securities of one or more Financing Subsidiaries and/or Special Purpose Subsidiaries and/or Partner Subs. These entities would be organized specifically for the purpose of facilitating the issuance of the Equity Interests, which would be reported by ELL on its financial statements or the footnotes relating thereto. Entergy represents that sufficient internal controls will be put in place of ELL to enable it to monitor the creation and use of any of these entities. Applicants further represent that no Financing Subsidiary or Special Purpose Subsidiary shall acquire or dispose of, directly or indirectly, any interest in any ''utility asset,'' as that term is defined under the Act.

Applicants propose that ELL acquire all of the outstanding shares of common stock or other equity interests of one or more Financing Subsidiaries (''Financing Subsidiaries''). In connection with the issuance of Equity Interests, ELL may enter into one or

more guarantee or other credit support agreements in favor of a Financing Subsidiary. Any Financing Subsidiary or Special Purpose Subsidiary organized by ELL under the authority granted by the Commission in this proceeding will be organized only if, in management's opinion, the creation and utilization of the Financing Subsidiary or Special Purpose Subsidiary, will likely result in tax savings, increased financial flexibility, increased access to capital markets and/or lower cost of capital for ELL.

Additionally, in connection with the issuance of certain types of Equity Interests, ELL and/or a Financing Subsidiary may organize one or more separate special purpose subsidiaries (''Special Purpose Subsidiaries'') as any one or any combination of: (i) A limited liability company under the Limited Liability Company Act (''LLC Act'') of the State of Delaware or other jurisdiction considered advantageous by ELL; (ii) a limited partnership under the Revised Uniform Limited Partnership Act of the State of Delaware or other jurisdiction considered advantageous by ELL; (iii) a business trust under the Business Trust Act of the State of Delaware or other jurisdiction considered advantageous by ELL or (iv) any other domestic entity or structure that is considered advantageous by ELL. In the event that any Special Purpose Subsidiary is organized as a limited liability company, ELL or a Financing Subsidiary may also organize a second special purpose wholly owned subsidiary under the General Corporation Law of the State of Delaware or other jurisdiction (''Partner Sub'') for the purpose of acquiring and holding Special Purpose Subsidiary membership interests in order to comply with any requirement under the applicable law that a limited liability company have at least two members. In the event that any Special Purpose Subsidiary is organized as a limited partnership, ELL or a Financing Subsidiary also may organize a Partner Sub for the purpose of acting as the general partner of the Special Purpose Subsidiary and may acquire, either directly or indirectly through the Partner Sub, a limited partnership interest in the Special Purpose Subsidiary to ensure that the Special Purpose Subsidiary will have a limited partner to the extent required by applicable law.

ELL, a Financing Subsidiary and/or a Partner Sub will acquire all of the common stock or all of the general partnership or other common equity interests, as the case may be, of any Special Purpose Subsidiary for an amount not less than the minimum required by any applicable law (*i.e.*, the aggregate of the equity accounts of the Special Purpose Subsidiary) (the aggregate of the investment by ELL, a Financing Subsidiary and/or a Partner Sub being referred to herein as the ''Equity Contribution''). ELL and/or a Financing Subsidiary may issue and sell to any Special Purpose Subsidiary, at any time or from time to time in one or more series, unsecured subordinated debentures, unsecured promissory notes or other unsecured debt instruments (''Notes'') governed by an indenture or other document, and the Special Purpose Subsidiary will apply both the Equity Contribution made to it and the proceeds from the sale of Equity Interests by it from time to time to purchase Notes. Alternatively, ELL and/or a Financing Subsidiary may enter into a loan agreement or agreements with any Special Purpose Subsidiary under which the Special Purpose Subsidiary will loan to ELL and/or a Financing Subsidiary both the Equity Contribution to the Special Purpose Subsidiary and the proceeds from the sale of Equity Interests by the Special Purpose Subsidiary, from time to time, and ELL and/or the Financing Subsidiary will issue to the Special Purpose Subsidiary Notes evidencing the borrowings. The Financing Subsidiary or the Special Purpose Subsidiary will then transfer (directly or indirectly) the proceeds to ELL resulting in its payment of dividends out of capital to ELL. The terms (*e.g.*, interest rate, maturity, amortization, prepayment terms, default provisions, etc.) of any Notes would generally be designed to parallel the terms of the Equity Interests to which the Notes relate (the maximum principal amount of such Notes will not exceed the aggregate of the related Equity Contribution and Equity Interests).

ELL or any Financing Subsidiary also proposes to guarantee solely in connection with the issuance of Equity Interests by a Special Purpose Subsidiary: (i) Payment of dividends or distributions on such securities by the Special Purpose Subsidiary if and to the extent such Special Purpose Subsidiary has funds legally available therefore; (ii) payments to the holders of such securities due upon liquidation of such Special Purpose Subsidiary or redemption of the Equity Interests of such Special Purpose Subsidiary and (iii) certain additional amounts that may be payable in respect of such Equity Interests. Alternatively, ELL may provide credit support for any guarantee that is provided by a Financing Subsidiary.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of any Special Purpose Subsidiary, the holders of Equity Interests issued by a Special Purpose Subsidiary will be entitled to receive, out of the assets of the Special Purpose Subsidiary available for distribution to its shareholders, partners or other owners (as the case may be), an amount equal to the par or stated value or liquidation preference to the Equity Interests plus any accrued and unpaid dividends or distributions.

The constituent instruments of each Special Purpose Subsidiary will provide, among other things, that the Special Purpose Subsidiary's activities will be limited to the issuance and sale of Equity Interests from time to time and the lending to a Financing Subsidiary or Partner Sub of the proceeds thereof and the Equity Contribution to the Special Purpose Subsidiary, and certain other related activities.

The amount of any Equity Interests issued by any Finance Subsidiary shall be counted against the $200 limitation on the amount of Preferred Units and Equity Interests that ELL may issue directly, as set forth in this Application or in any other application-declaration that may be filed in the future, to the extent that ELL guarantees the securities.

Use of Proceeds

The proceeds to be received by Holdings, ELP and ELL from the financings authorized by the Commission, under this Application-Declaration, will be used for general corporate purposes, including (i) the financing of working capital requirements, (ii) financing, in part, investments by Holdings in ELP and ELL and (iii) the repayment, redemption, refunding or purchase by ELL of its securities.

Additional Representations

Entergy and the Company make the following additional representations:

(i) At all times during the Authorization Period, Entergy, Holdings and ELL will each maintain common equity of at least 30% of its consolidated capitalization (based upon the financial statements filed with the most recent Quarterly Report on Form 10–Q or Annual Report on Form 10–K or, with respect to Holdings and ELL, prior to the availability of these financial statements, based on the pro forma balance sheets, attached hereto as Exhibit FS 9). The term ''consolidated capitalization'' is defined to include,

where applicable, all common equity (comprised of common stock or Common Units, additional paid-in capital, retained earnings, treasury stock and/or minority interests), Preferred Stock or Preferred Units, preferred securities, equity linked securities, Long-term debt, short-term debt and current maturities.[9]

(ii) With respect to the securities issuance authority proposed in this Application on behalf of ELL: (a) Within four business days after the occurrence of a Ratings Event,[10] Applicants will notify the Commission of its occurrence (by means of a letter, via fax, e-mail or overnight mail to the Office of Public Utility Regulation) and (b) within 30 days after the occurrence of a Ratings Event, Applicants will submit a post-effective amendment to this Application explaining the material facts and circumstances relating to that Ratings Event (including the basis on which, taking into account the interests of investors, consumers and the public as well as other applicable criteria under the Act, it remains appropriate for ELL to issue the securities for which authorization has been requested in this Application, so long as ELL continues to comply with the other applicable terms and conditions specified in the Commission's order authorizing the transactions requested in this Application). Furthermore, no securities authorized as a result of this Application will be issued following the 60th day after a Ratings Event by ELL if the downgraded rating(s) has or have not been upgraded to investment grade. Applicants request that the Commission reserve jurisdiction through the remainder of the Authorization Period over the issuance of any securities that ELL is prohibited from issuing as a result of the occurrence of a Ratings Event if no revised rating reflecting an investment grade rating has been issued.

Distributions Out of Capital

As a result of the proposed restructuring, substantially all of the assets of the Company will be allocated to ELL and the retained earnings of ELP will effectively be set to zero. ELP, therefore, may need to pay distributions to Holdings, its immediate parent company, out of capital. Accordingly, the Applicants request authorization for ELP to pay distributions out of capital, to the extent not otherwise authorized under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–5175 Filed 9–26–05; 8:45 am]

BILLING CODE 8010–01–P

[9] Applicants state that the consequence of Entergy, Holdings or ELL failing to satisfy the 30% common equity to consolidated capitalization condition is that the applicable company would not be authorized to issue securities in a transaction subject to Commission approval, except for securities which would result in an increase in the common equity percentage.

[10] A ''Ratings Event'' will occur, with respect to securities proposed to be issued by ELL if (i) the security to be issued by ELL, pursuant to the authority sought in this Application-Declaration, upon original issuance, is rated below investment grade; (ii) any outstanding security of ELL that is rated is downgraded below investment grade or (iii) any outstanding security of Entergy that is rated is downgraded below investment grade. For purposes of this provision, a security will be deemed to be rated ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52474; File No. SR–CBOE–2005–72]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Marketing Fee Assessed on Options on DIAMONDS (''DIA'')

September 20, 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 1, 2005, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 7, 2005, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The CBOE has designated this proposal as one changing a fee imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal, as amended, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its marketing fee program to assess the marketing fee on options on DIAMONDS® (''DIA''). The fee would be imposed at the rate of $.22 per contract. The Exchange will assess a marketing fee on DIA options commencing on September 2, 2005.

Below is the text of the proposed rule change, as amended. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

CHICAGO BOARD OPTIONS EXCHANGE, INC.

FEES SCHEDULE

[August 24, 2005] September 1, 2005

1. No Change.

2. [Market-Maker, RMM, e-DPM & DPM] Marketing Fee [(in option classes in which a DPM has been appointed)] (6) (16)

3–4. No Change.

Footnotes:

(1)–(5) No Change.

(6) The Marketing Fee will be assessed only on transactions of Market-Makers, RMMs, e-DPMs, [and] DPMs*, and LMMs* at the rate of $.22 per contract on all classes of equity options, options on HOLDRs, [and] options on SPDRs*, and options on DIA*. The fee will not apply to Market-Maker-to-Market-Maker transactions. This fee shall not apply to index options and options on ETFs (other than options on SPDRs *and options on DIA*). Should any surplus of the marketing fees at the end of each month occur, the Exchange would then refund such surplus at the end of the month, if any, on a pro rata basis based upon contributions made by the Market-Makers, RMMs, e-DPMs, [and] DPMs*, and LMMs*.

(7)–(16) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange revised the proposed rule change to insert rule text that is contained in CBOE's Fees Schedules but was omitted from the initial filing.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

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

On October 29, 2004, CBOE amended its marketing fee program.[6] The current marketing fee is assessed upon DPMs, e-DPMs, Market-Makers, and Remote Market-Makers (''RMMs'') at a rate of $0.22 for every contract they enter into on CBOE other than Market-Maker-to-Market-Maker transactions (which includes all transactions between any combination of DPMs, e-DPMs, Market-Makers, and RMMs). The marketing fee is currently assessed in all equity option classes and options on HOLDRs[7] and options on SPDRs,[8] all of which are classes in which a DPM has been appointed. All funds generated by the marketing fee are collected by CBOE and recorded according to the DPM, station, and class where the options subject to the fee are traded. The money collected is disbursed by CBOE according to the instructions of the DPM. Those funds are available to the DPM solely for those trading crowds where the fee was assessed and may only be used by that DPM to attract orders in the classes of options for which the fee was assessed.

CBOE now proposes to amends its marketing fee to assess the fee on options on DIA, an Exchange Traded Fund (''ETF'').[9] The marketing fee would now be assessed upon LMMs,[10] as well as Market-Makers, e-DPMs, and RMMs at a rate of $0.22 for every contract they enter into on CBOE other than Market-Maker-to-Market-Maker transactions (which includes all transactions between any combination of LMMs, Market-Makers, e-DPMs, and RMMs). The Exchange would commence to assess the fee on DIA options on September 2, 2005.

Additionally, in option classes like DIA in which an LMM instead of a DPM has been appointed,[11] CBOE proposes to amend its marketing fee plan to allow an LMM that has been appointed by the Exchange to perform the functions that a DPM typically performs under the marketing fee plan. Specifically, the LMM, like the DPM, would be expected to negotiate with payment accepting firms to pay for that firm's order flow. All funds generated by the marketing fee would be collected by CBOE, and disbursed by CBOE according to the instructions of the LMM. The Exchange is not making any other changes to its marketing fee plan.

2. Statutory Basis

The Exchange believes that its proposal, as amended, is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Sections 6(b)(4) of the Act[13] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[14] and Rule 19b–4(f)(2)[15] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–72 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–CBOE–2005–72. 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, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

[6] For a description of the CBOE's marketing fee program, *see* Securities Exchange Act Release No. 50736 (November 24, 2004), 69 FR 69966 (December 1, 2004) (SR–CBOE–2004–68).

[7] HOLDRs are trust-issued receipts that represent an investor's beneficial ownership of a specified group of stocks. *See* CBOE Rule 5.3.07.

[8] *See* Securities Exchange Act Release No. 51052 (January 18, 2005), 70 FR 3757 (January 26, 2005) (SR–CBOE–2005–05).

[9] ETFs are shares of trusts that hold portfolios of stocks designed to closely track the price performance and yield of specific indices.

[10] Under CBOE rules, LMMs may be appointed in an option class for which a DPM has not been appointed. *See* CBOE Rule 8.15A.

[11] Currently, the only option class in which an LMM instead of a DPM has been assigned is the DIA option class and the CBOE has no plans to change this at this time. Telephone conversation between Michou Nguyen, Attorney Advisor, Division of Market Regulation, Commission, and Andrew Spiwak, Assistant Secretary, CBOE, on September 7, 2005.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] The effective date of the original proposed rule change is September 1, 2005, and the effective date of Amendment No. 1 is September 7, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on September 7, 2005, the date on which the Exchange submitted Amendment No. 1.

submissions should refer to File Number SR–CBOE–2005–72 and should be submitted on or before October 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5182 Filed 9–26–05; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Eastern District of Missouri, dated August 10, 2005, in Case No. 4:01cv01101 CDP, the United States Small Business Administration hereby revokes the license of Civic Ventures Investment Fund, L.P., a Missouri Limited Partnership, to function as a small business investment company under the Small Business Investment Company License No. 07/07–0099 issued to Civic Ventures Investment Fund, L.P. on August 1, 1997 and said license is hereby declared null and void as of September 9, 2005.

Dated: September 20, 2005.

Small Business Administration.

Jaime A. Guzman-Fournier,

Associate Administrator for Investment.

[FR Doc. 05–19241 Filed 9–26–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration # 10198 and # 10199

[Florida Disaster # FL–00009]

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Florida dated 9/14/2005.

Incident: Hurricane Katrina.

Incident Period: 8/25/2005.

EFFECTIVE DATE: 9/14/2005.

Physical Loan Application Deadline Date: 11/14/2005.

EIDL Loan Application Deadline Date: 6/14/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Monroe.

Contiguous Counties: Florida:

Collier, Miami-Dade.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	6.557
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.750
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10198 8 and for economic injury is 10199 0.

The State which received an EIDL Declaration # are Florida.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 14, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–19242 Filed 9–26–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for Wednesday, October 19, 2005, starting at 9 a.m. Pacific Daylight Time. Arrange for oral presentations by October 17, 2005.

ADDRESSES: Homewood Suites Seattle-Tacoma Airport, 6955 Fort Dent Way, Tukwila, Washington.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer, Office of Rulemaking, ARM–207, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–5174, FAX (202) 267–5075, or e-mail at *john.linsenmeyer@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held October 19, 2005 at Homewood Suites Seattle-Tacoma Airport in Tukwila, Washington.

The agenda will include:

- Opening Remarks.
- FAA Report.
- European Aviation Safety Agency Report.
- Ice Protection Harmonization Working Group (HWG) Report.
- Vote on the Ice Protection HWG Report.
- Airworthiness Assurance HWG Report.
- Avionics HWG Report.
- § 25.1309 Summary of Recent Activity on Specific Risk.
- Review of Action Items.

Attendance is open to the public, but will be limited to the availability of meeting room space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than October 17, 2005. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating domestically by telephone, the call-in number is (202) 366–3920; the Passcode is ''2235.'' To insure that sufficient telephone lines are available, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of your intent to participate by telephone by October 17. Anyone calling from outside the Washington, DC metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by October 17 to present oral statements at the meeting. Written statements may

[17] 17 CFR 200.30–3(a)(12).

be presented to the committee at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by providing copies at the meeting. Copies of the document to be presented to ARAC for decision by the FAA may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on September 20, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 05–19207 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Environmental Impact Statement; Portland, OR and Vancouver/Clark County, WA

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT) and Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Federal Highway Administration and Federal Transit Administration are issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for proposed highway and transit improvements in the Interstate 5 Columbia River Crossing (CRC) corridor between the Portland, Oregon and Vancouver/Clark County, Washington area.

FOR FURTHER INFORMATION CONTACT: Steve Saxton, Area Engineer, Federal Highway Administration, Washington Division at 360–753–9411, Jeff Graham, Operations Engineer, Federal Highway Administration, Oregon Division at 503–587–4727 and from Linda Gehrke, Deputy Regional Administrator, Federal Transit Administration, at 206–220–4463.

Public information contact: Amy Echols, CRC Communications Manager, Washington State Department of Transportation (WSDOT) at 360–737–2726 or *echolsa@columbiarivercrossing.org*.

Agency Coordination contact: Heather Gundersen, CRC Environmental Manager, Oregon Department of Transportation (ODOT), at 360–737–2726 or *gundersenh@columbiarivercrossing.org*.

Additional information on the Columbia River Crossing Project can also be found on the project Web site at *http://www..columbiarivercrossing.org*.

SUPPLEMENTARY INFORMATION:

Proposed Action Background

The FHWA and FTA, as Federal co-lead agencies, the Washington State Department of Transportation (WSDOT), Oregon Department of Transportation (ODOT), Southwest Washington Regional Transportation Council (RTC), Metropolitan Service District (Metro), Clark County Public Transportation Benefit Area Authority (C–TRAN), and Tri-County Metropolitan Transportation District of Oregon (TriMet), will prepare an environmental impact statement (EIS) on proposed highway and transit improvements in the I–5 Columbia River Crossing corridor between the Portland, Oregon and Vancouver/Clark County, Washington area. The Columbia River Crossing study area generally encompasses the I–5 corridor from the I–5/I–405 interchange in Portland, Oregon in the south to the I–5/I–205 merge in Clark County, Washington in the north.

The existing I–5 crossing of the Columbia River is two side-by-side bridges, built in 1917 and 1958. In 1982 another river crossing—the Interstate 205 Glenn Jackson Bridge—opened approximately six miles to the east. Together, the two crossings connect the greater Portland-Vancouver region, carrying over 260,000 trips across the Columbia River daily. Growth in the region's population and border-to-border commerce is straining the capacity of the two crossings. This has resulted in trip diversion, unmet travel demand and hours of daily congestion that stalls commuters and delay freight, adversely affecting interstate traffic and commerce.

In 1998, the Washington State Department of Transportation (WSDOT) and Oregon Department of Transportation (ODOT) formed a bi-state partnership to study transportation and potential solutions in the I–5 Columbia River Crossing corridor. ODOT and WSDOT engaged local jurisdictions and agencies, businesses, neighborhoods, and interest groups in Washington and Oregon to plan and implement improvements along the I–5 corridor between the Portland metropolitan area and Vancouver in southern Clark County, Washington. Two studies resulted from this initial work: the Portland/Vancouver I–5 Trade Corridor Freight Feasibility and Needs Assessment Study Final Report, completed in 2000, and the Portland/Vancouver I–5 Transportation and Trade Partnership Final Strategic Plan, completed in 2002. This bi-state work included a variety of recommendations for corridor-wide improvements, traffic management and improvements in the I–5 Bridge Influence Area (BIA)—an approximately 5-mile section of the I–5 corridor extending from the SR 500 interchange north of the river to Columbia Boulevard south of the river.

Other significant transportation studies in the corridor include the South/North Major Investment Study (MIS) Final Report (1995) and the South/North Corridor Project Draft EIS (1998). These studies investigated a variety of high capacity transit corridors and modes between the Portland, Oregon area and Vancouver/Clark County, Washington.

Building on the previous studies, the I–5 Transportation and Trade Partnership Strategic Plan (2002), called for adding capacity over the Columbia River with a replacement bridge or by supplementing existing I–5 bridges to ease impacts of bottlenecks on local travel and interstate commerce. Another recommendation called for considering high-capacity transit improvements in the area of the I–5 Interstate Bridge over the Columbia River. The studies also stressed looking at a range of financing options, increasing general purpose lane capacity to three lanes where there are currently two at Delta Park and ensuring that low-income and minority populations within the corridor are involved in planning. ODOT is undertaking an Environmental Assessment at Delta Park. The Columbia River Crossing Project will study thse recommendations as well as others associated with the Bridge Influence Area.

Alternatives

A reasonable range of alternatives, including those identified in the Portland/Vancouver I–5 Transportation and Trade Partnership Final Strategic Plan and the South/North Corridor Project Draft EIS, will be considered. The EIS will include a range of highway and transit build alternatives, as well as a No-Build Alternative.

Probable Effects

FHWA, FTA, WSDOT, ODOT, RTC, Metro, C–TRAN, and TriMet will

evaluate significant transportation, environmental, social, and economic impacts of the alternatives. Potential areas of impact include: support of state, regional, and local land use and transportation plans and policies, neighborhoods, land use and economics, cultural resources, environmental justice, and natural resources. All impacts will be evaluated for both the construction period and the long-term period of operation. Measures to avoid, minimize and mitigate any significant impacts will be developed.

Scoping Process

Agency Coordination: The project sponsors are working with the local, state and federal resource agencies to implement regular opportunities for coordination during the National Environmental Policy Act (NEPA) process. This process will comply with SAFETEA–LU Section 6002.

Tribal Coordination: The formal Tribal government consultation will occur through government-to-government collaboration.

Public Meetings: Three public information meetings will be held in October 2005, including:

- Saturday, October 22, 2005, 11 a.m.–2 p.m., at the Jantzen Beach Super Center (central mall area), 1405 Jantzen Beach Center, Portland, Oregon;
- Tuesday, October 25, 2005, 4 p.m.–8 p.m., at Clark College, Gaiser Hall, 1800 E. McLoughlin Blvd., Vancover, Washington 98663; and
- Thursday, October 27, 2005, 4 p.m.–8 p.m., at OAME (Oregon Association of Minority Enterpreneurs) Main Conference Room, 4134 N. Vancouver St. (at N. Skidmore St.), Portland, OR 97211.

All public information meeting locations are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, should contact Amy Echols, CRC Communications Manager at 360–737–2726 or *echolsa@columbiarivercrossing.org* at least 48-hours in advance of the meeting in order for WSDOT or ODOT to make necessary arrangement.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposal will be accepted at the public meetings or can be sent to the Columbia River Crossing project office at 700 Washington Street, Suite 222, Vancouver, WA 98660 or to Heather Gundersen at *gundersenh@columbiarivercrossing.org*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 20, 2005.

Steve Saxton,

Area Engineer, Washington Division, Federal Highway Administration.

Linda M. Gehre,

Acting Regional Administrator, Region 10, Federal Transit Administration.

[FR Doc. 05–19230 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–05–21747; Notice 2]

Pipeline Safety: Grant of Waiver; Southern LNG

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); U.S. Department of Transportation (DOT).

ACTION: Grant of Waiver; Southern LNG.

SUMMARY: Southern LNG (SLNG) requested a waiver of compliance from the regulatory requirements at 49 CFR 193.2301, which requires each liquefied natural gas (LNG) facility constructed after March 31, 2000, to comply with 49 CFR part 193 and the National Fire Protection Association (NFPA) Standard NFPA 59A ''Standard for Production, Storage, and Handling of Liquefied Natural Gas.''

SUPPLEMENTARY INFORMATION:

Background

SLNG, an El Paso Company, requested a waiver from § 193.2301. This regulation requires each LNG facility constructed after March 31, 2000, to comply with 49 CFR part 193 and Standard NFPA 59A.

Standard NFPA 59A requires that welded containers designed for not more than 15 pounds per square inch gauge comply with the Eighth Edition, 1990, of American Petroleum Institute (API) Standard API 620, ''Design and Construction of Large, Welded, Low-Pressure Storage Tanks (Appendix Q).'' The Eighth Edition of API 620 requires inspection according to Appendix Q which calls for a full radiographic examination of all vertical and horizontal butt welds associated with the container.

SLNG is proposing to use the current Tenth Edition, Addendum 1, of API 620. The Tenth Edition, Addendum 1, of API 620, allows ultrasonic examination—in lieu of radiography—as an acceptable alternative non-destructive testing method. SLNG proposes to use ultrasonic examination on its project, which consists of full semi-automated and manual ultrasonic examination using shear wave probes. SLNG also proposes to use a volumetric ultrasonic examination which combines creep wave probes and focused angled longitudinal waive probes.

Findings

PHMSA considered SLNG's waiver request and published a notice inviting interested persons to comment on whether a waiver should be granted (70 FR 40781; July 14, 2005). There were two comments from the public in response to the notice; both were in support of the waiver.

One commenter, a member of the API Committee on Refinery Equipment, Subcommittee on Pressure Vessels and Tanks, said that the use of ultrasonic examination in lieu of radiographic examination for large LNG tanks improves jobsite safety because it eliminates the hazards of radiation exposure. This commenter also said that ultrasonic examination is more capable than radiographic examination for detecting crack-like weld defects.

The other commenter provided a copy of NFPA 59A Report on Comments, dated May 2005 and stated that the NFPA 59A Committee approved the latest edition of API 620.

The 2006 edition of NFPA 59A was approved as an American National Standard on August 18, 2005.

Grant of Waiver

In its Report on Comments, dated May 2005, the NFPA 59A Committee accepted in principle the latest edition of API 620, Tenth Edition, Addendum 1. The Tenth Edition, Addendum 1, of API 620 adds ultrasonic examination as an acceptable method of examination. The Tenth Edition, Addendum 1, of API 620 indicates that both radiographic and ultrasonic examination are acceptable means of testing.

For the reasons explained above and in the Notice dated July 14, 2005, PHMSA finds that the requested waiver is consistent with pipeline safety and that an equivalent level of safety can be achieved. Therefore, SLNG's request for waiver of compliance with § 193.2301 is granted.

Issued in Washington, DC, on September 21, 2005.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 05–19198 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–05–21314; Notice 2]

Pipeline Safety: Grant of Waiver; BOC Gases

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Grant of Waiver; BOC Gases.

SUMMARY: BOC Gases (BOC) petitioned PHMSA for a waiver from the pipeline safety standards at 49 CFR 195.306(c)(5) to allow the use of inert gas or carbon dioxide as the test medium for pressure testing its existing carbon dioxide pipeline.

SUPPLEMENTARY INFORMATION: The hazardous liquid pipeline safety regulation at 49 CFR 195.306(c)(5) allows an operator of a carbon dioxide pipeline to use inert gas or carbon dioxide as the test medium if the pipe involved is new pipe having a longitudinal joint factor of 1.00.

BOC is requesting the waiver to use carbon dioxide as the test medium in its carbon dioxide pipeline system. The BOC carbon dioxide pipeline system is approximately 14 miles northwest of Green River, Wyoming and located in Sweetwater County. (The County is a remote, uninhabited area that does not lie within any city or other populated limits.) The pipeline was constructed in February 1995 and is 7 miles in length. The line is constructed of 3.5-inch diameter, American Petroleum Institute (API) API 5L, Grade B seamless pipe, and has a wall thickness of 0.300-inches.

BOC calculated the pipe's internal design pressure to be 4,320 pounds per square inch gauge (psig) using the formula in § 195.106 and pressure tested the pipe after construction. The minimum pressure was 3,575 psig and the pipe was tested for 2 hours. The pipeline is effectively coated and has had a sacrificial anode cathodic protection system since its construction.

In justification for this waiver, BOC proposed the following testing procedure:

- BOC will use liquid carbon dioxide to pressure test the entire 7 mile pipeline;
- BOC will maintain a minimum test pressure of 3,575 psig or 60% of the pipeline's specified minimum yield strength (SMYS) for at least 4 hours;
- BOC will test the pipeline for an additional 4 hours at a minimum pressure of 3,146 psig or 48% of SMYS;
- BOC will station personnel along the pipeline to observe any conditions which might indicate leakage during the test;
- BOC personnel will be in constant communication with its personnel who will supervise and conduct the pressure test; and
- BOC's building facilities will be unoccupied and its personnel will be stationed along the pipeline where it parallels the State highway whenever the test pressure exceeds 50% SMYS during the pressure test.

BOC asserts that this pipeline does not pose a risk to the public or the environment because it is in a remote location, in excellent condition, and will be tested and operated at a low percentage of SMYS.

After reviewing the waiver request, PHMSA published a notice inviting interested persons to comment on whether a waiver should be granted (70 FR 40780; July 14, 2005). No comments were received from the public in response to the notice.

For the reasons explained above and in the July 14, 2005 Notice, PHMSA finds that the requested waiver is not inconsistent with pipeline safety and that an equivalent level of safety can be achieved. Therefore, BOC's request for waiver of compliance from 49 CFR 195.306(c)(5) is granted on the condition that BOC follow its proposed testing procedure for testing its carbon dioxide pipeline system.

Issued in Washington, DC on September 21, 2005.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 05–19199 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34729]

Saginaw Bay Southern Railway Company—Acquisition and Operation Exemption—Rail Line of CSX Transportation, Inc.

Saginaw Bay Southern Railway Company (SBS), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 67 miles of rail line owned by CSX Transportation, Inc. (CSXT) in Bay, Saginaw, Genesee, and Midland Counties, MI, as follows: (1) From milepost CC 0.0 at the Saginaw Station to milepost CC 26.2 at the Mt. Morris Station; (2) from milepost CB 0.0 at the Saginaw Station to milepost CB 17.37 at the Midland Station; (3) from milepost CBB 0.0 at the Saginaw Station to milepost CBB 16.7 at the Essexville Station; (4) from milepost CBC 0.0 to milepost CBC 2.0 both at the Saginaw Station; (5) from milepost CBD 2.2 to milepost CBD 4.5 both at the Saginaw Station; (6) from milepost CSF 0.0 to milepost CSF 0.82 both at the Saginaw Station; and (7) from milepost CBE 7.72 to milepost CBE 10.09 both at the Paines Station.

Under this transaction, SBS will purchase the track along the line from CSXT and will lease the underlying right-of-way. SBS plans to provide service over the line through the use of a contract operator, Lake State Railway Company, although only SBS will hold responsibility for providing common carrier rail service over the line.

SBS certifies that its projected revenues will not exceed those that would qualify it as a Class III carrier. However, because the projected annual revenues of the rail line to be operated will exceed $5 million following consummation of this transaction, SBS has certified to the Board, on August 19, 2005, as amended August 26, 2005, that it posted the required notice of its rail line acquisition at the workplace of the employees of CSXT and served the notice on the national offices of all labor unions with employees on the affected line. *See* 49 CFR 1150.32(e).

The transaction is expected to be consummated on or after October 28, 2005 (which is 60 days or more after SBS' certification to the Board that it had complied with the Board's regulation at 49 CFR 1150.32(e)).

This transaction is related to STB Finance Docket No. 34730, *James George and J&JG Holding Company, Inc.—Continuance in Control Exemption—Saginaw Bay Southern Railway Company*, wherein James George and J&JG Holding Company, Inc. seek authorization through a petition for exemption, to continue in control of SBS upon SBS' becoming a Class III rail carrier.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of

a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34729, 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 Andrew B. Kolesar III, Slover & Loftus, 1224 17th Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 19, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–19138 Filed 9–26–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3949-A

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 Form 3949–A, Information Referral.

DATES: Written comments should be received on or before November 28, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Referral.

OMB Number: 1545–1960.

Form Number: 3949–A.

Abstract: Form 3949–A is used by certain taxpayer/investors to wishing to report alleged tax violations. The form will be designed capture the essential information needed by IRS for an initial evaluation of the report. Upon return, the Service will conduct the same back-end processing required under present IRM guidelines.

Submission of the information to be included on the form is entirely voluntary on the part of the caller and is not a requirement of the Tax Code.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 215,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 53,750.

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 20, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–19221 Filed 9–26–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Amended notice (due to tropical storm Rita).

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference).

The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 27, 2005, from 1:30 p.m. to 3 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, September 27, 2005 from 1:30 p.m. to 3 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: September 20, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–19220 Filed 9–26–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW (Veterans Employability Survey)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Policy, Planning and Preparedness, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Policy, Planning and Preparedness, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the factors impacting a claimant discontinuing or interrupting their vocational rehabilitation and employment program plans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 28, 2005.

ADDRESSES: Submit written comments on the collection of information to Susan Krumhaus, Office of Policy, Planning and Preparedness (008A1), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420 or e-mail *susan.krumhaus@mail.va.gov*. Please refer to ''OMB Control No. 2900–NEW (Veterans Employability Survey)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Susan Krumhaus at (202) 273–5108 or FAX (202) 273–5993.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, the Office of Policy, Planning and Preparedness invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Employability Survey (VERS).

OMB Control Number: None assigned.

Type of Review: New collection.

Abstract: The purpose of the study is to obtain information on veterans who discontinued or interrupted their Vocational Rehabilitation and Employment (VR&E) Program. VA will use the data to determine the factors impacting the veteran's discontinuation of the program, effect on employability and types of interventions that might enable veterans to stay in the program and to compare this VR&E Program population with veterans who successfully complete the program and with the general veteran population.

Affected Public: Individuals or households.

Estimated Time Per Respondent and Annual Burden: 1,667 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 5,000.

Dated: September 14, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–5197 Filed 9–26–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0368]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 27, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–2900–0368.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0368'' in any correspondence.

Title: Monthly Statement of Wages Paid to Trainee (Chapter 31, Title 38, U.S.C.), VA Form 28–1917.

OMB Control Number: 2900–0368.

Type of Review: Extension of a currently approved collection.

Abstract: Employers providing on-job or apprenticeship training to veterans use VA Form 28–1917 to report each veteran's wages during the preceding month. VA uses the information to determine whether the veteran is receiving the appropriate wage increase and correct rate of subsistence allowance. Employers also use the form to document any training difficulties the veteran may be experiencing making it possible for VA's case manager to intervene to assist the veteran in a timely manner.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 28, 2005 at page 22173.

Affected Public: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Annual Burden: 1,800 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 300.

Estimated Total Annual Responses: 3,600.

Dated: September 13, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–5198 Filed 9–26–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-New (Philippine Claims Only)]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 27, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900-2900-New (Philippine Claims Only).''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900-New (Philippine Claims Only)'' in any correspondence.

Title: Supplemental Income Questionnaire (For Philippine Claims Only), VA Form 21–0784.

OMB Control Number: 2900-New (Philippine Claims Only).

Type of Review: New collection.

Abstract: Philippine claimants residing in the Philippine complete VA Form 21–0784 to report their countable family income and net worth. VA uses the information to determine the claimant's entitlement to pension benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 11, 2005 at page 39865.

Affected Public: Individuals or households.

Estimated Annual Burden: 30 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 120.

Dated: September 14, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–5199 Filed 9–26–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0519]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 27, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0519.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0519'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Locality Pay System for Nurses and Other Health Care Personnel, VA Form 10–0132.

OMB Control Number: 2900–0519.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0132 is used to collect data from the Bureau of Labor Statistics or other third party industry surveys to determine locality pay system for certain health care personnel. VA medical facility Directors use the data collected to determine the appropriate pay scale for registered nurses, nurse anesthetists, and other health care personnel.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 13, 2005 at pages 34185–34186.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 338 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 450.

Dated: September 13, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–5200 Filed 9–26–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Former Prisoners of War (FPOW) has scheduled a meeting for October 24–26, 2005, at the Department of Veterans Affairs Medical Center, 4801 Linwood Blvd., Kansas City, Missouri. The meeting will be held at each day in the medical center's recreation room from 9 a.m. to 4:30 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the needs of such veterans for compensation, health care, and rehabilitation.

On October 24, the meeting will begin with an introduction of Committee members, remarks from dignitaries, and a review of Committee reports. The afternoon session will consist of an update of activities since the last meeting and time for FPOW veterans and the public to address the Committee. The agenda on October 25 will include a review of VA's Compensation and Pension Service activities, focusing on outreach initiatives to FPOWs about the new presumptive medical conditions of heart disease and the residuals of stroke. The Committee will then receive a progress report on the development of special designations of FPOW records at VA medical facilities. The Committee will also receive a presentation from the Robert E. Mitchell, Center for Prisoner of War Studies. The day will conclude with new business and general discussion. On October 26, the Committee's medical and administrative work groups will meet to discuss their activities and report back to the Committee. Then the Committee will review the issues discussed throughout the meeting to compile a report to be sent to the Secretary.

Members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting to Ms. Renée L. Szybala, Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted materials must be received by October 15, 2005.

Dated: September 19, 2005.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–19282 Filed 9–26–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Services National Advisory Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under public Law 92–463 (Federal Advisory Committee Act) that the Executive Committee to the Department of Veterans Affairs Voluntary Services (VAVS) National Advisory Committee (NAC) will meet October 24–25, 2005, at the John Ascuaga's Nugget, Sparks, Nevada. On October 24 the session will begin at 8:30 a.m. and end at 4:30 p.m. On October 25 the session will begin at 8:30 a.m. and end at 12 noon. the meeting is open to the public.

The NAC consists of sixty-three national organizations and advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities within VA health care facilities. The Executive Committee consists of nineteen representatives from the NAC member organizations and acts as the NAC governing body in the interim period between NAC annual meetings.

Business topics for the October 24 morning session include: review of goals and objectives, review of minutes, Veterans Health Administration update, VAVS update of the Voluntary Service program's progress since the 2005 NAC annual meeting, Parke Board update, review of the 2005 annual meeting evaluations and the VAVS Partner's Treasurer report. The October 24 afternoon business session topics include: the 2006 NAC Annual Meeting plans, workshop and plenary sessions/suggestions. The October 25 morning business session topics include: 2007 NAC Annual Meeting planning, review of recommendations from the 2005 NAC Annual Meeting, subcommittee reports, standard operating procedure revisions, new business and Executive Committee appointments.

No time will be allocated at this meeting for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Committee. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to : Ms. Laura Balun, Designated Federal Officer, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Individuals interested in attending are encouraged to contact Ms. Balun at (202) 273–8952.

Dated: September 19, 2005.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–19281 Filed 9–26–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet November 1–3, 2005, from 8:30 a.m. to 4:30 p.m. each day, in room C–7, VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee will make recommendations to the Secretary regarding such programs and activities.

On November 1, the agenda will include a briefing from VHA's Women Veterans Health Program Director, VA's mammography program, the Commander of the Joint Task Force for Sexual Assault Prevention and Response from the Department of Defense, VA's ''Seamless Transition'' initiative, the required ethics briefing, an update on the 2004 Report of the Advisory Committee on Women Veterans recommendation matrix, and presentation of Certificates of Appointment to four new Committee members. On November 2, the Committee will receive briefings and updates on issues related to women veterans in the Veterans Health Administration, the National Committee for Employer Support of the Guard and Reserve, and medical exams for separating and retiring service members. On November 3, the Committee will receive briefings and updates on issues in the Veterans Benefits Administration, including the review of PTSD ratings disparities, legislative issues related to veterans, and will discuss any new issues that the Committee members may introduce.

Any member of the public wishing to attend should contact Ms. Rebecca Schiller, at the Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Schiller may be contacted either by phone at (202) 273–6193, fax at (202) 273–7092, or e-mail at *00W@mail.va.gov.* Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before

the meeting, or within 10 days after the meeting.

Dated: September 19, 2005.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–19284 Filed 9–26–05; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
September 27, 2005

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2005–06 Late Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT76

Migratory Bird Hunting; Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2005–06 Late Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special late-season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 24, 2005.

ADDRESSES: You may inspect comments on the special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service (703) 358–1967.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In a proposed rule published in the August 5, 2005, **Federal Register** (70 FR 45336), we proposed special migratory bird hunting regulations for the 2005–06 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In a proposed rule published in the April 6, 2005, **Federal Register** (70 FR 17574), we requested that tribes desiring special hunting regulations in the 2005–06 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that would be taken to limit the level of harvest, where it could be shown that failure to limit the harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season [August 18, 1988, **Federal Register** (53 FR 31612)].

Although the August 5 proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the late-season proposals. Early-season proposals were addressed in a final rule published in the August 31, 2005, **Federal Register** (70 FR 51984). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about September 24 or later each year and have a primary emphasis on waterfowl.

Status of Populations

In the August 5 proposed rule and August 31 final rule, we reviewed the status for various populations for which seasons were proposed. This information included brief summaries of the May Breeding Waterfowl and Habitat Survey, population status reports for blue-winged teal, sandhill cranes, woodcock, mourning doves, white-winged doves, white-tipped doves, and band-tailed pigeons, and the status and harvest of waterfowl. The tribal seasons established below are commensurate with the population status.

Comments and Issues Concerning Tribal Proposals

For the 2005–06 migratory bird hunting season, we proposed regulations for 29 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with late-season proposals are included in this final rulemaking; 19 tribes have proposals with late seasons. Proposals are addressed in the following section. The comment period for the proposed rule, published on August 5, 2005, closed on August 15, 2005, we received one comment regarding the notice of intent published on April 6, 2005, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. This comment was addressed in the August 31 final rule.

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. 1531B1543; 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 initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998, and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 to $1,064 million, with a mid-point estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://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://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 this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate

in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

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. Thus, 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 on Indian trust resources. However, by virtue of the tribal proposals contained in this rule, we have consulted with all the tribes affected by this rule.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ Accordingly, part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub. L. 106–108.

(**Note:** The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature).

■ 2. Section 20.110 is amended by revising paragraphs (a), (b), (c), (g), (m), (n), (o), (q), (r), (s), and (u) and by adding paragraphs (v) through (cc) to read as set forth below. (Current § 20.110 was published at 70 FR 51987, August 31, 2005.)

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters)

Doves

Season Dates: Open September 1, through September 15, 2005; then open November 12, through December 26, 2005.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

Ducks (Including Mergansers)

Season Dates: Open October 15, 2005, through January 29, 2006.

Daily Bag and Possession Limits: Seven ducks, including two hen mallards, two redheads, two Mexican ducks, two goldeneye, two cinnamon teal, and three scaup. The seasons on canvasback and pintail are closed. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and common moorhens, singly or in the aggregate.

Geese

Season Dates: Open October 22, 2005, through January 29, 2006.

Daily Bag and Possession Limits: Three geese, including no more than three dark (Canada) geese and three white (snow, blue, Ross's) geese. The possession limit is six dark geese and six white geese.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required for all persons 14 years and older and must be in possession before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Members and Nontribal Hunters)

Tribal Members Only

Ducks (Including Mergansers)

Season Dates: Open September 1, 2005, through March 9, 2006.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Nontribal Hunters

Ducks (Including Mergansers)

Canvasbacks: Open October 1, through November 29, 2005.

Other ducks: Open October 1, 2005, through January 15, 2006.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, three scaup, and two redheads. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: The daily bag and possession limit is 25.

Geese

Dark Geese

Season Dates: Open October 1, 2005, through January 15, 2006.

Daily Bag and Possession Limits: Four and eight geese, respectively.

Light Geese

Season Dates: Open October 1, 2005, through January 15, 2006.

Daily Bag and Possession Limits: Three and six geese, respectively.

Youth Waterfowl Hunt

Season Dates: September 24–25, 2005.

Daily Bag and Possession Limits: Same as ducks but includes one canvasback.

General Conditions: Tribal members and Nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(c) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)

Sandhill Cranes

Season Dates: Open September 10, through October 16, 2005.

Daily Bag Limit: Three sandhill cranes.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in his or her possession while hunting.

Doves

Season Dates: Open September 1, through October 30, 2005.

Daily Bag Limit: 15 mourning doves.

Ducks

Canvasback: Open October 1, through November 8, 2005.

Other ducks: Open October 1, through December 12, 2005.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (including no more than two female mallards), two redheads, one pintail, one canvasback (when open), two scaup, and two wood ducks. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Five mergansers, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 15, 2005, through January 17, 2006.

Daily Bag and Possession Limits: Three and six, respectively.

White-Fronted Geese

Season Dates: Open September 24, through December 18, 2005.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open September 24, through December 29, 2005.

Daily Bag and Possession Limits: 20 geese daily, no possession limit.

General Conditions: The waterfowl hunting regulations established by this final rule apply only to tribal and trust lands within the external boundaries of the reservation. Tribal and nontribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

* * * * *

(g) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

Nontribal Hunters on Reservation

Ducks

Season Dates: Open September 24, 2005, through January 31, 2006. During this period, days to be hunted are specified by the Kalispel Tribe as weekends, holidays, and for a continuous period in the months of October and November, not to exceed 107 days total. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 1 pintail, 3 scaup, and 2 redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 3, 2005, through September 18, for the early-season, and open October 1, through January 31, 2006, for the late-season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 and 10, respectively, for the early season, and 3 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant and is in addition to dark goose limits for the late-season. The possession limit is twice the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 1, 2005, through January 31, 2006.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 3 scaup, and 2 redheads. The seasons on canvasbacks and pintail are closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2005, through January 31, 2006.

Daily Bag Limit: 3 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit. Hunters must observe all State and Federal regulations, such as those contained in 50 CFR part 20.

* * * * *

(m) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers)

Band-Tailed Pigeons

Season Dates: Open September 1, through September 30, 2005.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, through September 30, 2005.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers)

Canvasback: Open September 24, through November 22, 2005.

Other ducks: Open September 24, 2005, through January 8, 2006.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback (when open), three scaup, and two redheads. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and moorhens, singly or in the aggregate.

Dark Geese

Season Dates: Open September 24, 2005, through January 8, 2006.

Daily Bag and Possession Limits: Four and eight geese, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Navajo Nation also apply on the reservation.

(n) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Ducks (Including Mergansers)

Season Dates: Open September 24, through November 18, 2005, and open November 28, through December 4, 2005.

Daily Bag and Possession Limits: Six, including no more than six mallards (three hen mallards), five wood ducks, one redhead, two pintail, and one hooded merganser. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, through November 18, and open November 28, through December 31, 2005.

Daily Bag and Possession Limits: Three and Six Canada geese, respectively. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A seasonal quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 10, through November 13, 2005.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

Dove

Season Dates: Open September 1, through November 13, 2005.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal member shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits which differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: tribal members are exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

(o) Skokomish Tribe, Shelton, Washington (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 16, through December 31, 2005.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 16, through December 31, 2005.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2005, through February 15, 2006.

Daily Bag and Possession Limits: Two brant. Possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 16, through December 31, 2005.

Daily Bag Limits: 25 coots.

Mourning Doves

Season Dates: Open September 16, through December 31, 2005.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 16, through December 31, 2005.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeon

Season Dates: Open September 16, through December 31, 2005.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the respective Tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office.

* * * * *

(q) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

Tribal Members

Ducks (Including Coots and Mergansers)

Season Dates: Open September 15, 2005, and through February 28, 2006.

Daily Bag and Possession Limits: 8 and 16 ducks, respectively, except that bag and possession limits may include no more than 2 female mallards, 1 pintail, 3 scaup, and 2 redheads.

Geese

Season Dates: Open September 15, 2005, and through February 28, 2006.

Daily Bag and Possession Limits: 7 and 14 geese, respectively; except that the bag limits may not include more than 2 brant and 1 cackling Canada goose. For those tribal members who engage in subsistence hunting, the Tribes set a maximum annual bag limit of 365 ducks and 365 geese.

Snipe

Season Dates: Open September 15, 2005, through February 28, 2006.

Daily Bag and Possession Limits: 8 and 16, respectively.

Nontribal Hunters

Ducks

Season Dates: Open October 15, 2005, through January 29, 2006.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, three scaup, and two redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 and 50, respectively.

Geese

Season Dates: Open October 15, 2005, through January 29, 2006.

Daily Bag and Possession Limits: Four geese, including four dark geese but no more than three light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Open January 14, through January 29, 2006.

Daily Bag and Possession Limits: Two and four brant, respectively.

Snipe

Season Dates: Open November 19, 2005, through February 26, 2006.

Daily Bag and Possession Limits: 8 and 16, respectively.

General Conditions: All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Nontribal hunters 16 years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp. Other tribal regulations apply, and may be obtained at the tribal office in Marysville, Washington.

(r) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

Ducks

Season Dates: Open November 1, 2005, through February 8, 2006.

Daily Bag and Possession Limits: 15 and 20, respectively. The season on canvasbacks is closed.

Coots

Season Dates: Open November 1, 2005, through February 8, 2006.

Daily Bag and Possession Limits: 20 and 30, respectively.

Geese

Season Dates: Open November 1, 2005, through February 8, 2006.

Daily Bag and Possession Limits: The daily bag limits are seven geese and five brant. The possession limits for geese and brant are 10 and 7, respectively.

Mourning Dove

Season Dates: Open September 1, through December 31, 2005.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

(s) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

Teal

Season Dates: Open October 16, 2005, through January 28, 2006.

Daily Bag Limit: Six teal.

Ducks

Season Dates: Open November 1, 2005, and through February 28, 2006.

Daily Bag Limit: Six ducks, including no more than two hen mallards, two black ducks, two mottled ducks, one fulvous whistling duck, four mergansers, two scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, and one pintail. The season is closed for harlequin ducks.

Sea Ducks

Season Dates: Open October 16, 2005, and through February 28, 2006.

Daily Bag Limit: Seven ducks including no more than four of any one species (only one of which may be a hen eider).

Canada Geese

Season Dates: Open September 11, through September 25, 2005, and open November 1, 2005, through February 28, 2006.

Daily Bag Limits: Five Canada geese during the first period and three during the second.

Snow Geese

Season Dates: Open September 11, through September 25, 2005, and open November 1, 2005, through February 28, 2006.

Daily Bag Limits: 15.

Woodcock

Season Dates: Open October 16, through November 30, 2005.

Daily Bag Limit: Three woodcock.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. Tribal members will observe all basic Federal migratory bird hunting regulations contained in 50 CFR.

* * * * *

(u) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

Band-Tailed Pigeons (Wildlife Management Unit 10 and Areas South of Y–70 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1, through September 15, 2005.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and Areas South of Y–70 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1, through September 15, 2005.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers)

Canvasbacks: Open October 15, through December 13, 2005.

Other ducks: Open October 15, 2005, through January 29, 2006.

Daily Bag and Possession Limits: Seven ducks, including no more than three mallards (including no more than one hen mallard), two redheads, one canvasback (when open), and one pintail. The possession limit is twice the daily bag limit.

Coots, Moorhens and Gallinules

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots, moorhens, and gallinules, singly or in the aggregate. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 15, 2005, through January 29, 2006.

Bag and Possession Limits: Three and six, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, the area open to waterfowl hunting in the above seasons consists of: The entire length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3, will be open to waterfowl hunting during the 2005–06 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2005–06 season.

(v) Bois Forte Band of Chippewa, Nett Lake, Minnesota (Tribal Members and Nontribal Hunters)

Ducks

Pintails and Canvasbacks (For nontribal hunters only): Open September 27, through October 26, 2005.

Other ducks: Open September 27, through November 25, 2005, except shooting hours on opening day and for every hunting day for the remainder of the season would be one-half hour before sunrise and continue to one-half hour after sunset for tribal members. Nontribal shooting hours will go from one-half hour before sunrise to sunset on reservation.

Daily Bag Limits and Possession Limits: 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. The possession limit is twice the daily bag limit.

The Band's Conservation Department regulates nontribal harvest limits under the following regulations: (1) Nontribal hunters must be accompanied at all times by a Band Member guide; (2) Nontribal hunters must have in their possession a valid small game hunting license, a Federal migratory waterfowl stamp, and a Minnesota State waterfowl stamp; (3) Nontribal hunters and Band Members must have only Service-approved nontoxic shot in possession at all times; (4) Nontribal hunters must conform to possession limits established and regulated by the State of Minnesota and the Bois Forte Band.

(w) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

Canvasback

Season Dates: Open October 8, through November 30, 2005.

Other Ducks (Including Mergansers)

Season Dates: Open October 8, through November 30, 2005.

Daily Bag and Possession Limits: The daily bag limit is seven, including no more than two hen mallards, one pintail, one canvasback (when open), two redheads, and three scaup. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 8, through November 30, 2005.

Daily Bag and Possession Limits: Two and four, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(x) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

Ducks

Season Dates: Open October 1, 2005, through January 28, 2006.

Daily Bag and Possession Limits: 9 and 18 ducks, respectively.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 6 and 12 geese, respectively.

General: The Klamath Tribe provides its game management officers, biologists, and wildlife technicians with regulatory enforcement authority, and has a court system with judges that hear cases and set fines.

(y) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)

Tribal Members

Ducks (Including Mergansers and Coots)

Season Dates: Open October 1, 2005, through March 10, 2006.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (only one of which may be a hen), two scaup, one mottled duck, two redheads, two wood ducks, one canvasback, and one pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 15, 2005, through March 10, 2006.

Daily Bag and Possession Limits: Three and six, respectively.

White-Fronted Geese

Season Dates: Open October 15, 2005, through March 10, 2006.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open October 15, 2005, through March 10, 2006.

Daily Bag and Possession Limits: 20 and 40, respectively.

Youth Waterfowl Hunt

Season Dates: Open September 25, through September 26, 2005.

Daily Bag and Possession Limits: Same as above.

Nontribal Hunters

Ducks (Including Mergansers and Coots)

Season Dates: Open October 1, 2005, through January 5, 2006.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (only one of which may be a hen), two scaup, one mottled duck, two redheads, two wood ducks, and one pintail. The season on canvasbacks is closed. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 15, 2005, through January 17, 2006.

Daily Bag and Possession Limits: Three and six, respectively.

White-Fronted Geese

Season Dates: Open October 1, 2005, through December 25, 2005.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open October 15, 2005, through January 17, 2006, and open February 25, through March 10, 2006.

Daily Bag and Possession Limits: 20 and 40, respectively.

Youth Waterfowl Hunt

Season Dates: Open September 24, through September 25, 2005.

Daily Bag and Possession Limits: Same as above.

General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot. Nontribal hunters must possess a validated Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the Tribe.

(z) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Canvasbacks

Season Dates: Open October 1, through November 29, 2005.

Other Ducks

Season Dates: Open October 1, 2005, through January 15, 2006.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback (when open), one scaup, and two redheads. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 mergansers, respectively.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 10 and 20 coots, respectively.

Geese

Season Dates: Open October 1, 2005, through January 15, 2006.

Daily Bag and Possession Limits: Four geese, including not more than three light geese or two white-fronted geese. The possession limit is twice the daily bag limit.

Common Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(aa) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

Canvasbacks

Season Dates: Open December 1, 2005, through February 15, 2006.

Ducks (Including Mergansers)

Season Dates: Open October 1, 2005, through February 15, 2006.

Daily Bag and Possession Limits: 10 and 20, respectively.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Six and twelve, respectively.

Brant

Season Dates: Open December 1, 2005, through February 15, 2006.

Daily Bag and Possession Limits: Three and six, respectively.

Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 10 and 20, respectively.

Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

(bb) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

Off Reservation

Ducks (Including Mergansers)

Season Dates: Open September 27, 2005, through February 25, 2006.

Daily Bag and Possession Limits: 10 ducks, including no more than 5 hen mallards, 4 pintail, 7 scaup, and 5 redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Seven geese, including seven dark geese but no more than six light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

On Reservation

Ducks (Including Mergansers)

Season Dates: Open September 27, 2005, through March 9, 2006.

Daily Bag and Possession Limits: 10 ducks, including no more than 5 hen mallards, 4 pintail, 7 scaup, and 5 redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Seven geese, including seven dark geese but no more than six light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

General Conditions: Steps will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Swinomish Tribal Fish and Game.

(cc) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)

Ducks (Including Mergansers)

Canvasbacks: Open October 9, through November 16, 2005.

Other ducks: Open October 9, through December 21, 2005.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (no more than two hen mallards), two redheads, one canvasback (when open), one pintail, two scaup, and two wood ducks. The daily bag limit for mergansers is five, of which no more than one can be a hooded merganser. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as other ducks.

Daily Bag and Possession Limits: 15 and 30 coots, respectively.

Dark Geese

Season Dates: Open October 29, 2005, through January 31, 2006.

Daily Bag and Possession Limits: Three geese, including no more than one white-fronted goose or brant. The possession limit is twice the daily bag limit.

Light Geese

Season Dates: Open October 29, 2005, through January 19, 2006.

Daily Bag and Possession Limits: 20 geese daily, no possession limit.

General Conditions

(1) The waterfowl hunting regulations established by this final rule apply to tribal and trust lands within the external boundaries of the reservation.

(2) Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

Dated: September 21, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–19280 Filed 9–22–05; 2:21 pm]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
September 27, 2005

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Improved Seats in Air Carrier Transport Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2002–13464–2; Amendment No. 121–315]

RIN 2120–AC84

Improved Seats in Air Carrier Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the FAA's regulations on the crashworthiness of passenger and flight attendant seats on transport category airplanes used in part 121 passenger-carrying operations. This final rule requires those transport category airplanes type-certificated after January 1, 1958 which have not yet been manufactured that are used in part 121 passenger-carrying operations to have passenger and flight attendant seats that meet the current improved crashworthiness standards. This action is necessary because research, accident data, and analysis show that these improvements provide increased occupant protection in airplanes involved in impact-survivable accidents.

DATES: This amendment becomes effective October 27, 2005. Transport category airplanes manufactured on and after October 27, 2009 used in part 121 passenger carrying operations must comply with this final rule.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aircraft Engineering Division, AIR–100, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8807; facsimile (202) 267–5340, e-mail *hal.jensen@faa.gov.*

Authority for This Rulemaking

This rulemaking is promulgated under the authority described in Title 49, Subtitle VII, Part A, Subpart III, Section 44701, General requirements, and Section 44705, Air carrier operating certificates. Under section 44701(b), the FAA may prescribe minimum safety standards for an air carrier to which the agency issues a certificate under section 44705. Under section 44705, the FAA issues an operating certificate to a person desiring to operate as an air carrier if the FAA finds, after investigation, that the person properly and adequately is equipped and able to operate safely under Part A and the regulations and standards prescribed under it.

This regulation is within the scope of section 44701 because it establishes new minimum safety standards that the seats in transport category airplanes that are used in part 121 passenger-carrying operations must meet to protect occupants of that airplane if it is involved in an impact-survivable accident. The regulation also is within the scope of section 44705 since the section requires that the person to whom the FAA issues an air carrier operating certificate be properly and adequately equipped to operate safely. The improved seats mandated by this regulation will increase the safety of air carrier operations.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy of this final rule using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by filing a request with the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. To facilitate a prompt response, please make sure to identify the amendment number, notice number or docket number of this rulemaking in your request.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question about this document, you may contact your local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our Web page, *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*, or by e-mailing us at *9–AWA–SBREFA@faa.gov.*

Background

A. History

1. Pre-SNPRM

This final rule is in response to Section 303(b) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223) (the Act of 1987) and follows a notice of proposed rulemaking published in 1988 and a supplemental notice of proposed rulemaking published in 2002 (SNPRM). The Act of 1987 directed the Secretary of Transportation to:

> ''* * * initiate a rulemaking proceeding to consider requiring all seats onboard all air carrier aircraft to meet improved crashworthiness standards based upon the best available testing standards for crashworthiness.''

In 1988 the FAA concurrently published a final rule, ''Improved Seat Safety Standards'' (53 FR 17640, May 17, 1988)(Amendment 25–64) and a notice of proposed rulemaking, ''Retrofit of Improved Seats In Air Carrier Transport Category Airplanes'' (53 FR 17650, May 17, 1988) (Notice 88–8). Amendment 25–64 upgraded the certification standards for occupant protection during emergency landing conditions in transport category airplanes from only a 9g static standard to an upgraded 9g static standard and a new 16g dynamic standard. Notice 88–8 proposed to prohibit, after June 16, 1995, the operation of transport category airplanes under parts 121 and 135 that were type-certificated after January 1, 1958 unless all seats onboard met the certification requirements of § 25.785 in effect on June 16, 1988. These certification requirements include the 16g standard created by Amendment 25–64.

The FAA received 70 comments to Notice 88–8. Based on these comments, we decided that we needed more information to determine the impact of Notice 88–8 on the aviation community. Even though much research and development on the dynamic testing of seats had been done to support the 16g standard, the process of certifying seats to the 16g standard was still new. The dynamic testing requirements for 16g seats represented an increase in sophistication and complexity over the simpler static testing used for 9g seats. Industry needed time to work out the technical problems of meeting the 16g seat standard, and we needed time to evaluate specific problems presented by industry and to develop proper guidance material for obtaining 16g seat certification.

As these issues were addressed by industry and the FAA, our standards

and guidance material evolved. This helped the aircraft seat manufacturing industry transition from producing 9g seats to 16g seats that could meet the new requirements. During this time, we never lost sight of the goal of improving the crashworthiness of seats in transport category airplanes. The significant actions taken during this time included:

- On March 6, 1990, we published an advisory circular (AC) to provide industry guidance on the dynamic test process. This was AC 25.562–1, ''Dynamic Evaluation of Seat Restraint Systems & Occupant Protection on Transport Airplanes.'' AC 25.562–1A superseded AC 25.562–1 on January 19, 1996.
- We worked with industry through the Society of Automotive Engineers SEAT Committee to develop a standard that would detail the requirements for dynamic testing of a 16g seat. That standard (Aerospace Standard (AS) 8049, Performance Standard for Seats in Civil Rotorcraft, Transport Aircraft and General Aviation Aircraft) was incorporated in Technical Standard Order (TSO)–C127 (Rotorcraft, Transport Airplane, and Normal and Utility Airplane Seating Systems) in 1992 and revised in 1998 (TSO–C127a).
- We held a public meeting on October 23 and 24, 1995, in Seattle, Washington, to gather information on challenges the industry had in meeting our 16g dynamic seat certification requirements for new programs and for existing airplanes that would be affected by the proposed rulemaking. We presented our views and listened to comments from the aviation industry at that meeting. The information gained during this public meeting led us to reconsider the original rule proposed in Notice 88–8.

From the mid-to-late 1990s, although industry and the FAA continued to address significant 16g seat issues primarily related to occupant protection, enough progress had been made that 16g seats were being produced and approved regularly. Therefore, we determined it was suitable to move forward with our proposed rulemaking to improve seats on transport category airplanes. As a result, we held a public meeting on December 8 and 9, 1998. The goals of this meeting were to discuss our proposed revisions to Notice 88–8 and to get current information and viewpoints. In addition to seeking comments at the public meeting, we reopened the docket for comments. We received approximately 40 additional comments by the close of this comment period.

The above is a summary of the events leading up to the publication of the SNPRM. For a more detailed discussion, please read the ''Background'' section of the SNPRM.

2. SNPRM

On October 4, 2002, the FAA published a supplemental notice of proposed rulemaking (SNPRM), ''Improved Seats in Air Carrier Transport Category Airplanes'' (67 FR 62294, October 4, 2002). The SNPRM proposed the following:

- For all airplanes manufactured on or after four years after the effective date of the final rule, all passenger and flight attendant seats on the airplane must meet the requirements of § 25.562 in effect on June 16, 1988 (proposed § 121.311(j)(1));
- For all airplanes manufactured before four years after the effective date of the final rule, all passenger and flight attendant seats on the airplane must meet the requirements of § 25.562 in effect on June 16, 1988, after any passenger seat or any flight attendant seat in that airplane is replaced (proposed § 121.311(j)(2)); and
- On or after fourteen years after the effective date of the final rule, no person could operate a transport category airplane type-certificated after January 1, 1958, in passenger-carrying operations under this part unless all passenger and all flight attendant seats on the airplane meet the requirements of § 25.562 in effect on June 16, 1988 (proposed § 121.311(k)).

In preparing the SNPRM, the FAA hired a consultant to conduct an analysis of the benefits of 16g seats over 9g seats in transport category airplanes. This consultant, R.G.W. Cherry & Associates Limited (Cherry), performed this analysis and produced a report entitled ''A Benefit Analysis for Aircraft 16g Dynamic Seats'' (Report DOT/FAA/AR–00/13/April 2000)(the Cherry Report).

The Cherry Report studied those transport category airplane accidents that occurred from 1984 to 1998 and predicted the benefits to the occupants if 16g seats had been installed in those airplanes. It predicted:

- A range in the reduction of serious injuries to occupants in impact-survivable accidents if they were in 16g seats instead of 9g seats; and
- A range in the reduction of fatalities to occupants in impact-survivable accidents if they were in 16g seats instead of 9g seats.

Since publication of the SNPRM, Cherry completed an addendum report entitled ''A Benefit Analysis for Aircraft 16-g Dynamic Seats Configured Without Enhancements to Head Injury Criteria'' (DOT/FAA/AR–04/27, March 2003)(the Cherry Report Addendum). The Cherry Report Addendum assessed the incremental benefits resulting from the enhanced Head Injury Criteria.

B. Seat Classifications—9g/16g/16g ''Compatible''

Currently, there are several classifications of seats in transport category airplanes used in part 121 operations. They are as follows:

1.9g Seats

a. What is a 9g seat?

A 9g seat is tested to different load factors in different directions. The highest load factor is in the forward direction at 9g's. This is why these seats are commonly referred to as 9g seats. The testing procedure is typically accomplished by applying a force to the seat through the safety belt by means of a cable and winch system. The minimum force that the seat must be capable of reacting in the forward direction without structural failure is 9 times the combined weight of the seat and a 170 pound occupant in each seat place. As an example, if a seat had three places and the seat weighs 100 pounds, then the seat must be capable of reacting 5490 pounds ((170 pounds per occupant times 3 seat places plus 100 pounds of seat weight) times 9).

b. Regulations and the TSO for 9g Seats

In 1952, the regulations for transport category airplane seats were revised to increase the emergency landing condition forward load factor from 6g's to 9g's. Five years later, the FAA issued TSO–C39 (''Aircraft Seats and Berths'') that included guidance on static testing to 9g's for seats that would be used in transport category airplanes. It is important to note that obtaining TSO C39 approval for a seat does not mean that the seat is approved for installation in an airplane. A separate approval, known as an installation approval, is necessary to show the seat's compliance with all the applicable regulations of the FAA. However, because TSO C39 was closely aligned with the other applicable regulations then in effect, installation approval was easy to attain if the seat had TSO C39 approval. This was generally the process for getting a 9g seat approved for use in an airplane until 1988.

2.16g Seats

a. What is a 16g seat?

For transport category airplanes, a 16g seat is one that meets the 9g requirements of § 25.561 and the

dynamic requirements of § 25.562. A 16g seat is tested in a manner that simulates the loads that could be expected in an impact-survivable accident. Two separate dynamic tests are conducted to simulate two different accident scenarios: one in which the forces are predominantly in the vertical downward direction and one in which the forces are predominantly in the longitudinal forward direction. The highest load factor is in the forward direction at 16 g's. This is why these seats are commonly referred to as 16g seats. The test procedure requires ''crash testing'' the seat (*i.e.*, rapidly decelerating the seat in accordance with the criteria in § 25.562(b)). For the 16g test, this means deceleration must go from a minimum of 44ft/sec to 0 ft/sec in not more than 0.09 seconds with a peak deceleration of at least 16g's. The seats are tested with seat floor tracks that are representative of those that will be used in the airplane installation.

The seats are also tested with test dummies in each seat position. The reaction of the test dummies during the dynamic test imparts loads into the seat restraints and seat structure more accurately than the cable and winch system used in the 9g seat static pull test. The test dummies are instrumented to measure data like forces and accelerations that are then used for evaluating occupant protection criteria. As an example, accelerometers in the heads of the test dummies measure accelerations that are used in calculating the Head Injury Criteria (HIC). Limitations on an acceptable level of HIC serve to protect the occupant from serious head injury where head contact with seats or other structure can occur. 16g seats also:

- Protect the occupant from debilitating leg and spine injuries;
- Improve the attachment to the airframe;
- Protect crewmembers from serious chest injury when upper torso restraints are used; and
- Ensure occupants do not become trapped in their seats due to excessive seat deformation.

b. Regulations and the TSO for 16g Seats

In 1988, the emergency landing conditions were revised to include dynamic landing conditions to improve occupant protection. Four years later, TSO–C127 (''Rotorcraft, Transport Airplane, Normal and Utility Airplane Seating Systems'') was issued and included guidance on dynamic testing of 16 g's for seats that would be used in transport category airplanes. As previously stated, TSO seat approval is not installation approval. Although TSO C127 is the basis for getting most 16g seats approved for use in transport category airplanes, installation approval is not as easy as it is for a 9g seat.

The 16g seat installation approval process is more complicated than the 9g seat installation approval process because the dynamic standard includes several occupant protection criteria not required for the 9g seat. These occupant protection criteria can only be completely evaluated when the seat is considered in relationship to how and where it is installed in the airplane. For example, the dynamic test will cause a test dummy's upper torso and head to swing forward in an arcing motion since the test dummy is constrained only at the pelvis by the safety belt. A record of the motion of the test dummy's head through the arc, called a headpath trace, can be recorded during the testing for the TSO approval. The headpath trace is used during the installation approval process to ensure there is enough clearance from objects, like bulkheads or equipment mounted to partitions, to reduce the possibility of a head strike. Because airplane interior arrangements differ by airplane model—and even from operator to operator for the same airplane model—the headpath trace must be evaluated for each unique installation. This illustrates one reason why installation approval cannot rely solely on the TSO approval.

3. 16g ''Compatible'' Seats

Transport category airplanes designed between 1952 and 1988 were required to have seats that met the 9g emergency landing conditions in § 25.561. These standards were met by the static testing described above in the section entitled ''Regulations and TSO for 9g seats.'' Typically, the seats approved in those airplanes were also approved to TSO–C39. When Amendment 25–64 went into effect in 1988, any transport category airplane design submitted for approval was required to have seats that met both the 9g static standard in § 25.561 and the 16g dynamic standard in § 25.562.

However, Amendment 25–64 applied only to new airplane designs like the Boeing B–777. Airframe manufacturers occasionally redesign an existing airplane design to meet marketing demands rather than develop a new design from scratch. These redesigned airplanes are referred to as derivative models, since they are based largely on a previously approved airplane design. An example of this is the Boeing B–737NG models (737–600, –700, –800, –900), which are based on the previously approved B–737 airplane design. The basis for a derivative model design approval is the regulations in place at the time of the original design approval. However, for a variety of reasons, the derivative model design will be approved to regulations more current than those in existence when the original design was approved, but not quite to the level of the regulations current at the time of application for a derivative model design approval.

There are numerous derivative transport category airplane models approved after 1988 whose original design was approved before 1988. These airplane models' seats do not meet all the requirements of § 25.562 (16g seats), but meet more than the requirements of § 25.561 (9g seats). The dynamic standard in § 25.562 includes criteria to evaluate the seat's structural integrity and occupant protection during dynamic testing. Most of the derivative models meet the seat structural integrity requirements in § 25.562 but none or only a few of the occupant protection requirements in § 25.562. Seats that have been approved to meet the 9g requirements in § 25.561 and the seat structural integrity requirements in § 25.562 are commonly called 16g ''compatible'' seats.

Discussion of Comments

A. Request for Extension

Based on requests for an extension of the comment period from the Aerospace Industries Association, Airbus, the Aviation Technical and Safety Committee Cabin Safety Working Group, The Boeing Company, the General Aviation Manufacturers Association and the Regional Airline Association, the FAA extended the SNPRM's comment period from December 3, 2002 to March 3, 2003.

B. General Summary

In addition to the requests for extension, the FAA received forty-six comment submissions in response to the SNPRM. Two of these comment submissions are duplicates and one is an attachment from another comment, from which it had been separated. In addition, two individual commenters address issues about passengers with disabilities and are directed at other rulemaking initiatives. We will not address these two comment submissions in this discussion of comments.

Of the remaining forty-one comment submissions, twelve commenters either express support for the proposed rule or their support can be implied from their comments. Another ten commenters generally support the proposed rule, but suggest changes. These twenty-two commenters are mostly individuals and

companies that provide aircraft interior components. Among the reasons given for their support:

- The results of the cost-benefit analysis are reasonable and the amortized cost of seat upgrades will be offset by increased ticket prices;
- Any safety increase justifies any rise in ticket prices;
- Economies of scale will make safety improvements economical;
- The deaths and injuries being avoided far outweigh the issue of cost to conform to the proposed rule; and
- The safety of passengers and their ability to survive an impact-survivable accident is very important.

Six of these commenters also favor shorter implementation periods than those proposed in the SNPRM.

Fourteen commenters oppose the proposed rule. These commenters are mostly air carriers and airframe manufacturers. These commenters base their opposition on a belief that:

- The cost-benefit analysis is flawed because it fails to adequately address issues like how the costs would impact an industry struggling in a post-9/11 travel economy or whether the industry's limited resources would be better spent on other safety initiatives that would result in bigger dividends;
- The proposed rule is contrary to the Safer Skies and Commercial Aviation Safety Team (CAST) initiatives; and/or
- No convincing accident data exists to support the need for 16g seats and, therefore, a convincing safety benefit case cannot be made for requiring 16g seats.

The remaining five commenters recommend one or more of the following actions in addition, or as alternatives, to the proposed rule:

- Requiring the use of rearward facing seats;
- Making child restraint improvements and setting up regulatory changes that would mandate securing all children in safety seats;
- Requiring the use of three-point harness restraints or shoulder harnesses;
- Requiring the use of air bags;
- Requiring the use of a standardized seat belt latching mechanism or, without such standardization, telling passengers of any variations among seat belt latching mechanisms;
- Improving seat belt security, using fewer seats or changing seating configuration; and
- Focusing the FAA's attention on flight crew safety and health issues.

Some of those commenters expressing support or opposition for the proposed rule also recommend some of the above actions as possible alternatives.

C. Acronyms

In this Discussion of Comments section, we use the following acronyms or abbreviated company names to identify the associated commenters:

- Air Transport Association (ATA)
- AMSAFE Aviation (AMSAFE)
- Association of Asia Pacific Airlines (AAPA)
- Association of European Airlines (AEA)
- Association of Flight Attendants (AFA)
- Association of Professional Flight Attendants (APFA)
- Aviation Technical and Safety Committee Cabin Safety Working Group (ATASCO)
- B/E Aerospace, Inc. (B/E)
- The Boeing Company (Boeing)
- The International Brotherhood of Teamsters (IBT)
- National Air Disaster Alliance/Foundation (NADA/F)
- RECARO Aircraft Seating (RECARO)
- Regional Airline Association (RAA)
- Sicma Aero Seat Services (Sicma)

D. Removal of Retrofit Requirements

As stated in the regulatory evaluation supporting the SNPRM, the FAA believed there were two viable options to improve seats in transport category airplanes operating under part 121 at that time:

- Requiring full 16g seats in newly manufactured airplanes only (Option 2 in the SNPRM's regulatory evaluation); and
- Requiring full 16g seats in newly manufactured airplanes and replacement with full 16g seats for all other in-service airplanes (Option 5 in the SNPRM's regulatory evaluation).

While Option 2 was projected to have a benefit-to-cost ratio greater than 1.0 at that time, it also averted fewer fatalities and serious injuries than Option 5. Therefore, we decided to move forward with Option 5.

Based on the comments received to the SNPRM, we decided to re-evaluate the retrofit requirements of proposed §§ 121.311(j)(2) and 121.311(k). After detailed consideration, we now believe the final rule should not contain these retrofit requirements and that we should proceed with the requirement for newly manufactured airplanes only.

There are several reasons why the FAA's current analysis of Options 2 and 5 has resulted in a different conclusion from that in the SNPRM. All of these reasons are the result of the dramatic changes in the airline industry since the publication of the SNPRM.

1. Accelerated Retirement of Pre-1992 Manufactured Airplanes

Initially, the terrorist events of September 11, 2001 significantly impacted the airline industry because many people were less likely to fly. Rather than flying airplanes with empty seats, many airlines choose to ''park'' or ''retire'' their older airplanes. While the impact of the terrorist attacks on passenger boardings has passed, the industry remains in poor shape financially for reasons including, but not limited to, high fuel prices and increased competition from low-cost carriers. Therefore, those older airplanes that are inefficient to operate remain ''retired.''

Since 9/11, part 121 operators have ''retired'' over 1,360 airplanes. This represents 23.6% of the pre-9/11 part 121-fleet. The majority of these airplanes were manufactured before 1992 (for example, B–727, B–737–100/200/300, B–747–100/200, DC–9, F–100, DC–10, L–1011, MD–80) and were certified for 9g seats. Due to the high operating costs associated with these airplanes, it is unlikely that many of these ''retired'' airplanes will find their way back into the part-121 fleet.

The retirement of these pre-1992 manufactured airplanes has occurred at a rate far faster than that projected in the SNPRM's regulatory evaluation. In that regulatory evaluation, those seats installed on airplanes manufactured prior to 1992 fell into one of two categories: Group I or Group II seats.[1] In 1999, the seats in Groups I and II totaled 477,991 and comprised approximately 66% of the total seats in the part 121-fleet. For 2004, the projected seat total barely changed (477,707) and comprised approximately 54% of the part 121-fleet. The decrease from a projected 66% to a projected 54% was based on more airplanes with 16g seats entering the part 121-fleet. For the last forecast year in the SNPRM's regulatory evaluation (2020), these seats were projected to still make-up approximately 20% of all seats in the part 121-fleet. Therefore, with such a significant percentage of potential 9g seats projected to be in the part 121-fleet over the course of the forecast period (1999–2020), the need

[1] Group I covered those seats in airplanes manufactured before 1992 having seats installed before 1992. While 16g seats were being installed before this date, the majority of these seats are 9g. Group II covered those seats in airplanes manufactured before 1992 having replacement seats installed after 1991. Some (unknown) proportion of seats in this group may have partial 16g performance although no airplane model in this group is 16g certificated.

for the retrofit requirement was more apparent.

However, the accelerated retirement of so many pre-1992 manufactured airplanes alters this conclusion. These airplane retirements mean approximately 155,000 Group I and Group II seats were removed from the part-121 fleet. By comparison, for the last forecast year of the SNPRM's regulatory evaluation (2020), only 109,020 Group I and Group II seats were projected to have been removed from the part-121 fleet. The removal of these 155,000 seats also has a dramatic affect on the percentages discussed before. The percentage of Group I and Group II seats in the 2004 part-121 fleet drops from a projected 54% to an actual 36%. These seats are now at a level previously projected to occur in 2011.

Based on this accelerated retirement of pre-1992 manufactured airplanes, the FAA believes the level of occupant protection has increased dramatically over the past few years in the part-121 fleet. The FAA also believes the accelerated retirement of pre-1992 manufactured airplanes will continue to occur as airlines strive to increase the efficiency of their operations.

2. Increased Appeal and Use of Regional Jets

One factor that assisted in the accelerated retirement of pre-1992 manufactured airplanes is the continued appeal of regional jets and the new ways airlines are using these airplanes. As pointed out in the comment from RAA, within the last 10 years, the U.S. regional fleet has rapidly transitioned from a mostly turboprop fleet to a majority regional jet fleet. As of October, 2004, almost 1,600 regional jets were in operations with part 121 carriers, with over 600 more on firm order and options and conditional orders for over 1,700 more.[2]

Most of these regional jets are newer designs that must meet the requirements of Amendment 25–64. According to RAA, in 2004, about 77% of the entire regional fleet was capable of meeting at least the structural requirements of Amendment 25–64.

The effects of 9/11 on the airline industry have increased the appeal of the regional jet. Whereas, in the past, the regional jet was primarily used to replace turboprops or open new markets, several airlines are now using it as a tool to replace inefficient larger jets on certain routes. In addition, JetBlue and USAirways have placed large orders for regional jets that will be used in their own operations.

Based on developments such as these, the FAA expects that regional jets will play an even larger role in the part 121-fleet than considered for the SNPRM. As a result, this will further increase the percentage of 16g seats in the part 121-fleet.

3. Effect of Certification Costs

Based on the dramatic changes in the part-121 fleet over the past 3 years, which are expected to continue for the foreseeable future, the FAA believes the resource expenditure associated with retrofitting seats on existing airplanes would no longer be cost beneficial.

As stated before, the installation approval process for a 16g seat is more complicated than the installation approval process for a 9g seat because the dynamic standard includes occupant protection criteria not required for the 9g seat. The occupant criteria can only be completely evaluated when the seat is considered in relationship to how and where it is installed in the airplane's cabin. A seat's installation in relationship to other seats and other objects in the airplane affects the number of dynamic tests that must be successfully completed. If all seats were uniformly installed at the same distance from one row to the next in every airplane, only a few forward tests would be required: perhaps one to show structural adequacy and one or two to demonstrate occupant protection. However, this is not the case. Cabin configurations vary from airplane to airplane and also from operator to operator. Some operators even have different configurations within the same airplane model in their fleets.

Therefore, different tests are required to determine the effect of such things as seatback video monitors, bulkheads, partitions, seat pitch and seat angle (seats installed in tail sections where the fuselage tapers are frequently installed at an angle relative to the other rows). These examples represent some of the installation issues that result in numerous forward dynamic testing for a single airplane configuration. The testing and resultant seat approval can be used for other airplanes of the same model that have identical configurations. However, even if another operator uses the same seating configurations, if it uses seats from a different seat manufacturer or a different seat model from the same manufacturer, a new series of tests will be required.

Because approval to § 25.562 is largely dependent on the airplane's interior, considerable effort is expended by the seat manufacturer and the airframe manufacturer to ensure the seat design will work with the airplane design prior to any seat testing. If failure to meet § 25.562 becomes evident during testing, there are several options available to resolve the non-compliance: the seat can be redesigned, the seat can be reconfigured within the airplane, or the airplane can be redesigned. Usually redesigning the airplane is the last option chosen due to expense and time needed to integrate the change. But, if required, the design change can be accomplished at less expense in airplanes manufactured in the future than in existing airplanes. Upgrading existing airplanes to meet § 25.562 may require modification and substantiation of a range of seat pitches, changes to bulkheads to which flight attendant seats are mounted, increasing seat setbacks from bulkheads, partitions, and emergency exits, and removal of seats in some circumstances. All of these concerns can be handled more effectively when time is allowed for proper planning of the redesign and integration in airplanes manufactured in the future. Resolving the same non-compliances in existing airplanes require more costly modifications to the interiors and is more likely to result in the loss of revenue-generating seats.

4. Conclusion

Based on the above, the FAA decided to mandate improved seats for only those airplanes type-certificated after January 1, 1958 which have not yet been manufactured. While this requirement may require airframe manufacturers to make design modifications, we believe that the four-year compliance period provides sufficient time for them to develop efficient solutions.

The FAA still believes that this final rule is necessary to improve occupant protection in impact-survivable accidents. We believe that these types of accidents can still occur and this rule focuses on protecting occupants when these accidents do occur. Although we recognize that most of the seats in the current part-121 passenger carrying fleet are capable of meeting the dynamic testing structural criteria, we want to ensure that all occupant protection criteria '' including HIC '' are met. In addition, the airplanes covered by this final rule include several models that have hundreds of outstanding orders. These airplanes will remain in the part-121 passenger carrying fleet the longest and should, therefore, offer the best level of occupant protection available for seat certification. Finally, as we discuss below in more detail, this final rule is also cost-beneficial, with a benefits-to-costs ratio of 2.27 to 1 (or,

[2] Figures from the Regional Air Service Initiative (*http://www.regionalairservice.org*).

2.15 to 1 and 1.98 to 1 when underlying estimates are in present value at 3% and 7%. respectively).

We acknowledge that, for some yet-to-be manufactured airplanes, the requirement of this final rule will have no practical effect as 16g seats are already mandated as a result of the airplane's certification basis. Specifically, the requirements of Amendment 25–64 are applicable to those airplanes for which an application for a type certificate was made on or after June 16, 1988. Therefore, no action should be necessary to bring those airplanes into compliance with this final rule assuming that they comply fully with § 25.562. In general, this final rule will require compliance action for those new production airplane models that were type-certificated after January 1, 1958 and before June 16, 1988 and derivatives of such models for which an application for an amended type-certificate was made after January 1, 1958.

We do not believe that the removal of the retrofit requirement will cause an increase in the use of 9g seats. There is no incentive for seat manufacturers and operators to reverse the current trend away from 9g seats. Both domestic and foreign seat manufacturers have changed the way they manufacture seats in order to meet the requirements for 16g ''compatible'' and 16g seats. It currently does not make financial sense for them to run a separate 9g seat manufacturing line to meet a declining need. While some seats are sold with a 9g label, it is our belief that these seats are the same seats that are sold as 16g ''compatible.'' We see no reason why this situation would change. However, we will continue to monitor this issue. If we see an increase in the use of 9g seats, we will consider taking action to stop this development.

E. Discussion of Non-Retrofit Comments

Since the retrofit requirements have been removed from this final rule, the comments that address only those provisions (*i.e.*, proposed §§ 121.311(j)(2) and 121.311(k)) are no longer relevant to this rulemaking action and will not be addressed in detail in this final rule. We discuss the other comments received about the SNPRM in the following order:

- General comments about the cost-benefit analysis;
- Comments about the cost side of the cost-benefit analysis;
- Comments about the benefit side of the cost-benefit analysis;
- General comments about flight attendant seats;
- Comments about the cost-benefit analysis for flight attendant seats;
- General technical comments; and
- Other comments.

In the following discussion of comments, we use the term ''newly manufactured airplanes.'' This means those transport category airplanes type certificated after January 1, 1958 and manufactured on or after October 27, 2009, that are used in part 121 passenger-carrying operations.

Cost-Benefit Analysis—General

Proposed Rule Will Result in Increased Ticket Prices

A commenter states that the proposed rule would result in increased ticket prices. The commenter believes these higher prices would then force some of the traveling public to drive instead of fly, thereby increasing their risk of injury or death. This commenter suggests that we perform further analysis on this issue.

FAA Response: The FAA has greatly reduced the scope of this rulemaking from that proposed in the SNPRM. This change produces a reduction in predicted costs from $519 million to $34.7 million (or, $22.3 million and $13.3 million in present value at 3% and 7%, respectively).

Based on historical evidence and the vastly lower predicted costs of this rulemaking, we do not expect that this final rule will result in an increase in ticket prices.

Cost-Benefit Ratio Does Not Justify the Change

A commenter believes the cost-benefit ratio does not justify the proposed rule.

FAA Response: For the base case scenario presented in the regulatory evaluation supporting this final rule (*i.e.*, using accident rates for the 1984–1998 period), the total costs of this rulemaking, over the analysis period, are $34.7 million (or, $22.3 million and $13.3 million in present value at 3% and 7%, respectively). The total benefits of installing fully compliant 16g seats are $78.9 million (or, $47.9 million and $26.4 million in present value at 3% and 7%, respectively). Therefore, this rulemaking is cost-beneficial, with a benefit-to-cost ratio of 2.27 to 1 (or, 2.15 to 1 and 1.98 to 1 when underlying estimates are in present value at 3% and 7%, respectively).

While the final rule in its entirety is cost-beneficial, the FAA notes that, separately, the requirements for passenger seats and flight attendant seats are each cost-beneficial. For passenger seats, the benefits of installing fully compliant 16g seats are approximately $76.3 million (or, $46.4 million and $25.5 million in present value at 3% and 7%, respectively), as compared to the costs of $33.7 million (or, $21.5 million and $12.8 million in present value at 3% and 7%, respectively).

For flight attendant seats, the benefits of installing fully compliant 16g seats are $2.5 million (or, $1.5 million and $850,000 million in present value at 3% and 7%, respectively), as compared to the costs of approximately $954,000 ($731,000 and $529,000 in present value at 3% and 7%, respectively).

A copy of this regulatory evaluation is in the docket for this final rule. You can get a copy of this analysis by using any of the methods listed above in the ''Availability of Rulemaking Documents'' section of this final rule.

Analysis Fails to Accurately Account for Impact on Small Businesses

RAA states that the FAA fails to accurately account for the proposal's impact on small business operators.

FAA Response: The FAA performed a regulatory flexibility analysis for both the proposed rule and this final rule. Both assessments showed no significant impact on small businesses. A detailed discussion of this determination is located later in this document in the section entitled ''Regulatory Flexibility Analysis'' and in the regulatory evaluation supporting this final rule.

Analysis Fails to Consider Differences Between Regional Transport Category Airplanes and Very Large Transport Category Aircraft

RAA believes the cost-benefit analysis does not consider the differences between regional transport category airplanes and very large transport category airplanes. RAA argues that the benefit methodology assumes there will be 100 occupants per accident, while the average number of seats on regional transport category airplanes is well below 50 occupants.

FAA Response: The Cherry Report does not assume there will be 100 occupants per accident. The methodology in the Cherry Report used 100 occupants as an example to explain the concept of ''survivability chains.'' Of the 25 accidents that provided enough information for analysis, the number of passenger and flight attendant seats ranged from 38 to about 350.

Analysis Fails to Account for Fewer Flight Attendants in Regional Transport Category Airplanes

RAA states that regional transport category airplanes typically have only one flight attendant, not two. According

to RAA, this difference further skews the cost-benefit analysis.

FAA Response: Based on the FAA's flight attendant requirements as specified in § 121.391, the SNPRM's regulatory evaluation assumed one flight attendant per 50 passengers regardless of the aircraft size. Therefore, the cost and benefit calculations were normalized between regional transport category airplanes and larger transport category airplanes. This assumption remains in the regulatory evaluation supporting this final rule. We believe this assumption is conservative as air carriers often provide more flight attendants than the number required by regulation.

Rulemaking Does Not Provide the Most Safety Value for the Economic Investment

Boeing states the proposed rule does not provide the most safety value for the economic investment. Boeing states that since the aircraft manufacturing and airline industries have been reeling from some of the worst economic conditions in their histories, it is now more important than ever to invest in the safety initiatives that provide the best return. Therefore, Boeing believes we should reexamine the cost-benefit analysis.

FAA Response: As discussed above, based, in part, on comments received, the FAA reconsidered the proposed rule and removed requirements from the final rule to upgrade seats in existing airplanes. However, it still requires improved seats in newly manufactured airplanes. As a result, the costs of this final rule are substantially less than those of the proposed rule (from $519 million to $34.7 million). As noted above, this rulemaking is now cost beneficial with a benefits to costs ratio of 2.27 to 1.

Cost-Benefit Analysis—Costs

Costs Too Low

ATA believes the FAA's cost-benefit analysis is faulty because we:

(1) Failed to consider the high costs of upgrading monument walls to support flight attendant seats;

(2) Failed to consider the high costs associated with removing seats to meet the front-row head injury criteria (HIC); and

(3) Failed to consider the cost of demonstrating compliance with the more complex requirements than were discussed in previous 16g seat retrofit comment periods (1998, 1988).

ATASCO agrees that the FAA's cost forecast is ''too low'' and ''far from the realistic cost.'' ATASCO would like the FAA to perform the cost-benefit analysis again based on the comments received.

FAA Response: As for the issue of removing seats to comply with front-row HIC, the FAA notes that reasonable solutions and alternatives, like air-bag technology, exist and/or can be developed to prevent the need for removing a row of seats. Since this final rule does not require compliance for four years from its effective date, we believe that this compliance date provides industry with enough time to carry out cost-effective solutions.

As for ATA's concerns about compliance costs, we have included estimates of compliance costs in our cost-benefit analysis for this final rule.

Finally, our analysis includes estimates of the costs associated with strengthening monument walls to support 16g flight attendant seats. We based our estimates on data provided by an airframe manufacturer.

Analysis Fails to Consider Increase in Certification Costs

Boeing asserts that the FAA's cost analysis does not consider the added complexity of the new certification requirements. Boeing maintains that certification to the dynamic requirements of § 25.562 is more complex and time consuming than certification to the static testing requirements. This added complexity takes more time and resources for the airframe manufacturer, as well as the seat suppliers and the airlines. Boeing believes this ''complexity-factor'' is overlooked by our cost analysis.

ATA agrees with Boeing.

FAA Response: The FAA agrees that dynamic testing is more complex and time consuming than static testing. In addition, we acknowledge that we did not include this ''complexity-factor'' in the SNPRM's regulatory evaluation.

However, to ensure the accuracy of our estimates of the certification costs in the regulatory evaluation supporting this final rule, we obtained updated cost information from Boeing on this subject and have included it in our analysis. Since our estimates are now in-line with Boeing's cost information, we believe that the regulatory evaluation supporting the final rule does consider the complexity of certification to the dynamic requirements of § 25.562.

Cost-Benefit Analysis—Benefits

Analysis Fails to Consider Declining Accident Rate

Boeing believes the cost-benefit analysis fails to account for declining accident rates over the past decade. Boeing claims the accident statistics used by the FAA to support the proposed rule ignore impressive improvements made in aviation safety. Based on these improvements, Boeing maintains that the benefits analysis does not consider a declining future accident rate that is consistent with the Safer Skies goals. Boeing believes the FAA should revise the regulatory analysis to match FAA published safety goals.

RAA agrees with Boeing, stating that the Commercial Aviation Safety Team (CAST) projects an 80% reduction in accidents by 2007 through implementing a terrain awareness and warning system (TAWS) retrofit, implementing constant descent approach and other safety enhancement procedures. RAA states that the FAA's cost-benefit analysis should account for these safety improvements when forecasting the accident rate for the next 20 years.

ATA and AAPA agree with RAA and Boeing.

FAA Response: In the regulatory evaluation supporting this final rule, the FAA has performed sensitivity tests of our accident rate using multiple time periods. In each case, the predicted benefits exceed the predicted costs of this final rule.

Considerable progress has been made under CAST and Safer Skies to reduce the accident rate. However, we believe that impact-survivable accidents can still occur and this rule focuses on protecting occupants when these accidents do occur.

Analysis Fails to Consider Impact of September 11

Boeing comments that the FAA enplanement estimates do not account for the slowing world economy and the effects of the September 11, 2001 terrorist attacks. Boeing recommends that the FAA update the benefit analysis to reflect future estimated enplanements using 2001 or, preferably, 2002 data.

ATA agrees, stating that forecasts for future enplanements have decreased and this should impact the cost-benefit analysis.

FAA Response: The FAA acknowledges that we based the proposed rule's regulatory evaluation on pre-9/11 information. At that time, the long-term effects of 9/11 on enplanements were difficult to predict.

However, for the regulatory evaluation supporting this final rule, we based our enplanement estimates on the data in ''FAA Aerospace Forecasts for Fiscal Years 2003–2014'' (FAA–APO–03–1, March 2003). This forecast accounts for recent world events, including the events of September 11, 2001.

Analysis Fails to Consider U.S. Fleet Changes

Boeing states the benefit analysis does not account for changes in fleet capacity and fleet age resulting from recent world events. Boeing argues that the current part 121-fleet has changed dramatically since the terrorist attacks of September 11, 2001. Boeing states that many airlines are retiring their oldest aircraft because of system overcapacity and most of these retired aircraft have 9g seats. Boeing recommends that the FAA revise the benefit analysis to reflect this change.

FAA Response: Since, in the final rule, the FAA is no longer requiring existing seats to be retrofitted, changes in fleet capacity resulting from recent world events have only a negligible effect on the cost-benefit analysis. However, as we stated above, part 121-fleet changes since 9/11 are a factor in our decision to remove the retrofit provisions from the final rule. In particular, the retirement of old airplanes and the addition of new airplanes since 9/11 result in a younger fleet with more airplanes that are fully or partially compliant with § 25.562. We believe that newly manufactured seats used for replacement seats in existing airplanes—even when labeled as 9g seats—have, in general, the capability of meeting the 16g structural requirements. Based on this, when operators replace 9g seats with newly manufactured seats, the level of occupant protection improves. These factors support our decision for not going forward with rulemaking that affects the existing fleet.

''Double Counting'' of Benefits

Boeing believes the FAA gave credit to seat improvements for lives already saved by other safety initiatives. Boeing states that a subset of accident scenarios used to justify 16g seats includes accidents involving controlled flight into terrain (CFIT), wind shear, takeoff with improper flap/slat setting, and approach and landing accidents. Boeing believes we are ''double counting'' benefits already realized through other safety actions. Therefore, Boeing believes we should remove such accidents from the Cherry Report and recalculate the benefits.

FAA Response: Even though the accident rate has declined, impact-survivable (as well as non-survivable) accidents will still occur. For these impact-survivable accidents, installation of 16g seats in new airplanes will reduce the number of fatalities and serious injuries.

Further, the FAA reassessed the accidents used in the Cherry Report to determine if any of the accidents studied would not have happened today based on any regulatory change since their occurrence. We found that none of these regulatory changes would have directly affected the outcome of the accidents in the Cherry Report. Of further note, 10 of the 25 accidents studied yielded no reduction of fatalities or serious injuries due to using improved seats. This attests to the non-bias of the assessment.

Safety Analysis Inadequate

ATA states that the FAA's safety analysis is inadequate.

FAA Response: The FAA has continued to assess the merits of 16g seats since this rule was first proposed in 1988. During that time, we examined many options available to improve seats in transport category airplanes.

Based on this review, we believe there is a clear need to improve safety for passengers and flight attendants in the event of an impact-survivable accident. The Cherry Report demonstrates this need. Based on the predicted benefits of 16g seats over 9g seats in the Cherry Report and in the regulatory evaluation supporting this final rule, this final rule should achieve that goal.

Accidents Studied not Appropriate for this Analysis and No Proof 16g Seats Would Have Reduced Fatalities and Serious Injuries in Accidents Studied

Boeing states the benefit analysis was not well correlated with the types of accidents where 16g seats would have been an influence in saving lives. For example, Boeing claims the Cherry Report cited accidents where survival was a matter of chance. Boeing argues that such accidents are atypical of those used to justify part 25 standards. According to Boeing, it is inappropriate to use such accidents to justify the need for equipment that was not specifically designed to be effective in these severe events. Boeing believes that the FAA should not use these accidents in the benefit analysis.

In addition, Boeing believes the assessment of whether the use of 16g seats would have actually reduced the number of fatalities and serious injuries is ''inadequate.'' Boeing believes the Cherry Report's assessment approach is nothing more than ''guesswork.''

FAA Response: The FAA believes that the accidents studied were appropriate. The Cherry Report looked at only those impact-survivable accidents that had sufficient textural data from NTSB accident reports to make a determination whether a 16g seat would have made a difference in occupant survivability. The resulting 25 accidents were then studied to determine the difference in fatalities and serious injuries to occupants had 16g seats been in place. The assessment of these accidents was then used to make a more general assessment on similar impact-survivable accidents that lacked adequate textural information in the accident reports to make an individual finding.

The FAA also disagrees with Boeing's negative assertion about the Cherry Report's assessment approach. The Cherry Report used a logical three-stage assessment approach that eliminated any ''guesswork.'' First, as stated above, the Cherry Report determined which accidents were valid to study to evaluate the effect of 16g seats. The Cherry Report then looked at each space within the accident aircraft that exhibited a similar threat to the occupants. This prevented making gross assumptions about the effect of 16g seats on occupant survivability for the entire aircraft based on the worst-case area of the aircraft for each accident. Finally, for each space that posed a similar threat to the occupants, the Cherry Report then examined that space on a seat-by-seat basis to determine the effect a 16g seat would have made had it been in place. The FAA believes this assessment approach is the best analysis to date to predict the benefits of 16g seats. Nonetheless, as we stated before, we reevaluated the Cherry Report to see if any of the accidents studied would not have happened today based on any regulatory change since their occurrence. We found that none of these regulatory changes would have directly affected the outcome of the accidents in the Cherry Report. Therefore, we believe that these accidents remain valid candidates for evaluating the effect of 16g seats and provide sufficient proof of the benefits of such seats.

While survival for each occupant in an accident may be a matter of chance to some extent, the Cherry Report's analysis determined that the use of 16g seats would have increased those chances of survival for occupants in those accidents evaluated.

Analysis Overstates Benefits of Streamlined Seat Certification Process

ATA states the cost-benefit analysis is inaccurate and overstates the benefits of the FAA-Industry Seat Certification Streamlining activities. More importantly, ATA points out that this streamlining process does not yet exist. ATA believes we should not include efficiencies from streamlining the seat certification process in the cost-benefit analysis until they have been demonstrated.

AAPA agrees, claiming that our analysis takes credit for undemonstrated certification streamlining.

Boeing concurs, stating that the efforts to improve the seat certification process over the past several years have not materially improved the cost or flow time to certify seats. Therefore, Boeing argues that before the FAA can take the benefit from these activities, there must be demonstrated results.

FAA Response: The regulatory evaluation supporting the SNPRM did not quantify any benefits from the effects of the Seat Certification Streamlining efforts. The regulatory evaluation only stated that potential unclaimed benefits exist due to the efforts made by both industry and the FAA under the Seat Certification Streamlining program. This is the same approach used in the regulatory evaluation supporting this final rule.

To try to reduce certification costs and simplify the seat certification process, we will continue to work with industry under the Seat Certification Streamlining program. In the past, this cooperation has resulted in the FAA implementing many of industry's recommendations to improve the seat certification process and reduce costs.

Analysis Overestimates Performance of 16g Seats

Boeing states the benefits analysis vastly overestimates the expectation of 16g seat performance in past accident scenarios. Boeing believes we should recalculate the benefits to reflect this more accurately.

FAA Response: The performance expectation of 16g seats is based on long-standing FAA/industry-coordinated research. The genesis of the 16g seat standard came from recognition that many deaths or serious injuries in general aviation airplanes could be avoided if the crashworthiness of the airplane was improved. Additional research showed this also applied to transport category airplanes. Please refer to the ''Background'' section above for more information on the development of the 16g standard. The FAA viewed the new dynamic seat standards as a necessity and major improvement over existing static seat standards. While it is difficult to precisely quantify the improvements of seats that meet the dynamic standard over seats that meet only the static standard, we believe the estimates used to develop the regulatory evaluation are reasonable, justified and the best available data. No commenter provided data or expert opinion to dispute our assessment of 16g seat performance during the comment period.

Use of High Benefit Estimates in Error

Boeing is concerned that, in the FAA's benefit analysis, we used the Cherry Report's ''high'' benefit estimate of the decrease in fatalities and serious injuries because of the possible unmeasured benefits of ''better than 9g seats.'' Boeing believes that, of the accidents analyzed, it is likely that many of the accidents did not involve aircraft with ''better than 9g seats.'' According to Boeing, only five of the accidents studied definitely involved aircraft with ''better than 9g seats.'' Therefore, any unmeasured benefit of ''better than 9g'' seats should be specific to those 5 accidents.

ATA states that by using the ''high'' benefit estimate from the Cherry Report, we inaccurately stated the true costs/benefits of the proposed rule. ATA believes the use of the Cherry Report's ''high'' benefit estimate is not reasonable because of the number of 16g compatible seats in the fleet.

FAA Response: Based on our review of the comments received and a re-examination of the Cherry Report, the FAA agrees that the ''median'' benefit estimate from the Cherry Report represents a better estimate based on the available data. For the regulatory evaluation supporting this final rule, we have reassessed the benefits using the Cherry Report's ''median'' benefits estimate of the decrease in fatalities and serious injuries.

Flight Attendant Seats—General

Inclusion in Rule—General—Support

Goodrich Aircraft Interior Products strongly supports the inclusion of the 16g standard for flight attendant seats in the proposed rule. This support is based on the potential for additional passenger lives being saved by flight attendants who would not be injured due to their being seated in 16g seats during an accident.

IBT concurs, stating that the FAA has recognized the critical role of cabin crews in evacuating airplanes in survivable accidents.

An individual commenter also supports the inclusion of flight attendant seats in the proposed rule, stating there is little value in increasing passenger survivability without providing an equal increase for flight attendants.

A second individual commenter agrees, stating that cabin crews should be afforded the best crash protection against incapacitating injuries that could prevent them from performing their role during emergency evacuations.

FAA Response: The FAA agrees and is requiring flight attendant seats and passenger seats in newly manufactured airplanes to meet all the requirements of § 25.562. In this manner, the requirements for passenger and flight attendant seats are the same.

Inclusion in Rule—General—Opposition

An individual commenter states that the link between flight attendants and passengers being safely evacuated seems very tenuous at best and does not justify the high cost of the proposed rule.

A second individual commenter believes we have not fully developed the argument for flight attendant seat upgrades. This individual states that this issue should be the subject of an independent proposal. This individual also points out that variations in seat mounting add complexity and expense to the proposal and that we need to recognize this in our analysis.

AAPA also recommends that we exempt cabin attendant seats from this final rule.

FAA Response: The FAA believes sufficient information exists to support how important flight attendants are in passenger evacuation. However, we acknowledge the decision to upgrade flight attendant seats was not based on an independent study. Historically, NTSB reports have not consistently addressed the role of flight attendants in passenger evacuation in every accident. Under the best of circumstances, this information can be subjective and difficult to assess accurately. In the qualitative assessment of the benefits gained by including flight attendant seats in the proposal, we recognized the effect that trained personnel have on the successful evacuation of passengers who survive an accident's impact because of improved seats. We carefully analyzed the Cherry Report's findings and determined there were sufficient accident cases where the flight attendant would have survived with a 16g seat. We believe the flight attendants who would have survived an accident as a result of being restrained in a 16g seat would have helped these passengers to safety, thereby avoiding these fatalities. Our regulatory evaluation shows that the final rule is cost-beneficial for the inclusion of both passenger and flight attendant seats.

Inclusion in Rule—Need Testing Specific to Flight Attendant Seats

APFA strongly opposes including flight attendant seats in the rule. APFA believes testing specific to cabin attendant seats should be undertaken to adequately determine the safety of these seats before changes are mandated.

APFA claims that the assumption cannot be made that such seats will perform in a manner similar to passenger seats. Therefore, APFA concludes that flight attendant seats should meet the 16g standard, but stresses the differences between different seat types and configurations.

FAA Response: The dynamic standard of § 25.562 is suitable for all seats used in transport category airplanes and the FAA does not intend to delay this rule by undertaking a new study. Although accident reports have shown that flight attendant seats typically withstand a crash better than passenger seats in the same area and we recognize that passenger seats and flight attendant seats are mounted differently, we do not believe that those differences warrant any further performance analysis.

Inclusion in Rule—Costs Too High

ATASCO asserts that we should exclude flight attendant seats because of the high costs required to make flight attendant seats comply with § 25.562.

FAA Response: One reason the FAA decided to proceed with this rulemaking for newly manufactured airplanes only was the high cost of mandating the upgrade of flight attendant seats on existing airplanes.

However, for newly manufactured airplanes, we contend that the incremental costs of changing current designs to address seat mounting issues is justified by the benefits (*i.e.*, lives saved by flight attendants in impact-survivable accidents). In addition, we believe that manufacturers will be able to accomplish and implement these design changes prior to October 27, 2009.

Rule Should Apply to Newly Manufactured Aircraft Only

With 55% ($285.7 million) of the overall undiscounted upgrade costs related to flight attendant seats, Airbus questions the need for their replacement. Airbus believes the accident data does not support the assumption that cabin attendants would be ''less safe'' in 9g seats than passengers in 16g seats. Airbus also states that, to justify this cost, it is assumed that each cabin attendant who does not suffer fatal or serious injuries due to the introduction of 16g seats would then take actions to avert further passenger fatalities. Airbus believes this assumption is an uncertain estimate. Airbus recommends that we apply the 16g standard of § 25.562 only to new aircraft programs.

FAA Response: The high costs associated with replacing flight attendant seats in existing airplanes was part of the reasoning that led the FAA to revise the proposal so that this final rule applies to newly manufactured airplanes only.

However, we disagree with Airbus' comment about the role of flight attendants during emergency evacuations. As we stated above, we contend that a review of aircraft accidents indicates that the presence of flight attendants during an evacuation after an impact survivable accident improve passenger survivability. The Cherry Report specifically refers to cases where flight attendants assisted passengers to safety. Therefore, we contend it is reasonable to expect that surviving flight attendants trained in emergency procedures will save lives in an impact survivable accident.

Allow for TSO–C127 Compliant Flight Attendant Seat Installation

Boeing states that this final rule should allow for the installation of TSO–C127 compliant flight attendant seats because full compliance with § 25.562 requires upgrades to the monuments on which flight attendant seats are mounted. Boeing believes this violates the assumption in the SNPRM about minimizing the impact to the aircraft structure. Therefore, Boeing recommends that any implementation of flight attendant seat upgrades should exclude upgrade requirements for galleys, lavatories, partitions, or other items on which these seats are mounted.

FAA Response: The FAA is requiring one level of safety for seats throughout the cabin of newly manufactured airplanes. How a seat is secured to the airframe is crucial to ensuring that flight attendants are adequately protected. Therefore, the mounting structures for flight attendant seats that have been dynamically tested must be capable of supporting the seats consistent with current airworthiness requirements. Dynamically tested flight attendant seats have been successfully certified on numerous aircraft with many different mounting configurations. We contend that providing industry with a four-year period in which to comply with this rule provides enough time for industry to develop cost-effective solutions for any unique installation issues that 16g flight attendant seats may present.

Separate Rulemaking for Flight Attendant Seats

An individual commenter recommends placing the provisions affecting flight attendant seats in a separate rulemaking project. In this way, the complications and costs associated with covering flight attendant seats can be thoroughly examined.

FAA Response: The FAA believes we have conducted a thorough examination of the costs and other implications associated with applying the 16g standard to flight attendant seats. This analysis supports our decision to include flight attendant seats in the final rule. A separate rulemaking would result in a delay in providing the same crash protection for flight attendants as would be afforded passengers under this rule.

Flight Attendant Seats—Cost-Benefit Analysis

Analysis Fails to Consider Impact on Aircraft Structure and Monuments

Boeing states that the FAA's cost analysis fails to consider the impact of including flight attendant seats on the aircraft structure and monument design. Boeing believes we did not include the costs resulting from increased monument weight needed to support seats with higher loading capability in the cost analysis. In addition, Boeing states that because windscreens, partitions, and flight attendant seats are tested as a system, a change to the seats will require added testing and certification costs. Boeing argues that we do not account for these costs in our analysis.

ATA agrees with Boeing and believes that we also did not include the high costs to upgrade monument walls for flight attendant seats in the cost analysis.

Airbus states we did not consider the cost to modify the support structure for wall-mounted seats or to replace their components if the new dynamic test criterion is applied.

Finally, ATASCO states that compliance with § 25.562 will require potential cabin interior re-design and additional certification activities.

FAA Response: While the regulatory analysis supporting the SNPRM did not specifically break down the costs for testing and certification of improved flight attendant seats, these costs were included in that analysis and considered the use of monuments, partitions and wind screens, consistent with current policy. The regulatory analysis for this final rule also includes such costs. However, to ensure the accuracy of our estimates of the certification costs in the regulatory evaluation supporting this final rule, we obtained updated cost information from Boeing on this subject and have included it in our analysis. Our estimates are now in-line with Boeing's cost information.

As for any increased aircraft weight associated with improving flight

attendant seats, the FAA expects that any changes that might be required of monuments will not significantly increase airplane weight. However, we did include weight increases of 13 pounds per airplane for flight attendant dynamic seats and 36 pounds per airplane for passenger seats in our analysis. We recalculated costs based on this new data supplied by Boeing.

Finally, as for other impacts associated with improving flight attendant seats, the FAA has provided industry with adequate time to develop cost effective solutions to this rule.

Impact on Seating at Monument Locations

Boeing comments that our cost analysis did not examine the impact on seating arrangements at monument locations and the cost of new technologies to mitigate this impact.

ATASCO agrees, stating that compliance with § 25.562 will require the possible loss of an entire seat row due to configuration changes.

FAA Response: The FAA believes that new technologies, like inflatable restraints, provide low-cost solutions that will prevent the loss of a seat row and the associated revenue. In fact, we re-evaluated the issue, and, in the final rule's regulatory evaluation, estimated the acquisition/installation costs for seat-belt air bags necessary to meet the front row HIC requirement. The regulatory evaluation for this final rule estimates that about four percent of all seats will require such restraints. Use of these restraints is less costly than removing a row of seats to meet front row HIC requirements.

Technical Comments

Structural Requirements of § 25.562 Sufficient

AEA believes the structural requirements of § 25.562 provide a significant increase in safety. However, the extra requirements for occupant protection (*e.g.*, HIC) would require costly recertification programs and changes in seat layout. AEA argues that a safety case is missing for those extra requirements since the cost-benefit analysis does not specify the percentage of fatalities and injuries because of unfulfilled HIC and front-row rules.

FAA Response: The FAA believes it is necessary to propose a rule that ensures one level of safety for all occupants. HIC is an important aspect of occupant protection criteria. Therefore, we believe that a rule that requires compliance with only the structural requirements of § 25.562 is not meeting the intent or gaining the maximum benefit of Amendment 25–64.

We acknowledge that the cost to ensure HIC is met increases the cost of seat certification. However, we believe that this cost increase is justified by the benefits of HIC compliance.

Exclusion of 16g Seat Compliance From § 25.785

IBT objects to the exclusion of 16g seat compliance from § 25.785, as was originally outlined in the 1988 NPRM. IBT believes this omission weakens the rule.

AMSAFE agrees, remarking that proposing compliance with § 25.562 while excluding the requirements of § 25.785 weakens the proposed rule.

FAA Response: The FAA does not agree that the exclusion of the requirements of § 25.785 weakens this final rule. We believe the intent of this final rule is to improve seats in transport category airplanes based on dynamic testing. We also believe that § 25.562 accomplishes that goal without creating the extra burden of requiring compliance with the provisions of § 25.785.

AC 25.562–1A ''Exemption'' From Head Injury Protection Requirements

IBT raises concerns over what it terms as an exemption from the head injury protection requirements of § 25.562(c)(5) afforded by AC 25.562–1A. IBT states that this AC permits the extension of seat pitch away from a vertical hazard as a method of compliance with § 25.562. IBT believes that such an extension of seat pitch introduces a potential head injury hazard from the occupant of such a seat striking his own legs and/or the aircraft floor. IBT concludes that requiring a 16g seat without requiring HIC testing and adherence to HIC standards does not promote an acceptable safety level.

AMSAFE agrees, recommending removal of what it terms as the AC 25.562–1A ''loophole'' that allows an applicant to move or extend seat pitch away from a vertical hazard. By so moving or extending the seat, the occupant can strike his or her own legs or the floor of the airplane. The resulting HIC from this impact is not considered in this process. AMSAFE believes that removing the ''loophole'' will also reduce the potential for liability losses.

FAA Response: The FAA disagrees with the comments of IBT and AMSAFE. AC 25.562–1A provides acceptable methods for complying with § 25.562. This can include avoidance of the hazard by locating the seat such that the occupant's head cannot strike an object. Also, we do not believe the measurements obtained when a test dummy strikes itself are accurate for use in calculating HIC and predicting injury. Without an accurate means of measuring this phenomenon, we do not believe this situation should be evaluated as part of the criteria for determining compliance with § 25.562. We also do not believe that a head strike with the airplane floor occurs to an extent that it should be added to the § 25.562 criteria or evaluated under § 25.785. We believe this phenomenon is rare, if it does occur. Testing of this nature would require a representative floor structure be included in the dynamic test and this would dramatically increase the test's complexity.

Seat Track Failures

RECARO asks how we will handle situations in which a seat track fails, resulting in a failed 16g certification test.

FAA Response: Since seat track ''crowns'' are tested and approved under 16g dynamic standards, failures of the seat track crowns will be unacceptable. Traditionally, these types of failures require a redesign of the seat track fitting to lessen loads to the seat track crowns. This usually results in a change or replacement of the seat track fitting. Since the dynamic testing standard was developed in correlation with 9g static floors and seat tracks, the FAA does not expect this to be an issue in a 16g certification test.

Finally, we do not intend to provide new guidance on how seat tracks are evaluated under dynamic testing in this final rule.

Exemption for New Aircraft Configured With Either TSO–C127a Seats or Seats Partially Compliant With § 25.562

B/E recommends that FAA consider modifying the proposed rule to allow new aircraft configured with TSO–C127a seats or seats that are partially compliant with § 25.562 to be delivered as currently certified if the procurement time frame extends more than four years past the effective date of this final rule. B/E believes that it should be a goal not to interrupt existing aircraft procurement programs or add to the certification and logistical costs for upgrades. Therefore, B/E believes an airplane, such as a B737NG, should continue to be deliverable up to and beyond the effective date of the final rule, as long as seat part numbers and aircraft configuration remain unchanged. Beyond the four-year time frame, B/E recommends that 9g seats be upgraded to partial 16g compliance, similar to the seats on the B737NG.

FAA Response: The FAA disagrees with B/E's recommendation. We believe that seats in newly manufactured airplanes should meet all the requirements of § 25.562 by the compliance date. The four-year time frame after the effective date of this rule should allow industry enough time to set up cost-effective measures for meeting the rule and to adjust their procurement programs accordingly.

Nominally Compliant 16g Seats

B/E recommends that nominally compliant 16g seats keep the compliance baseline of their original certification.

FAA Response: The FAA believes that seats in newly manufactured airplanes should meet all the requirements of § 25.562 by the compliance date. This rule does not affect existing airplanes that already have ''nominally compliant 16g'' or partially compliant 16g seats since it applies only to newly manufactured airplanes. However, airplanes with those same certification bases that have not yet been manufactured must comply with all the requirements of § 25.562 by the compliance date.

''Full-up'' Amendment 25–64 Configurations

B/E recommends that for ''full-up'' Amendment 25–64 configurations, any new seat or cabin configuration be certified to the same requirements.

FAA Response: The FAA agrees that airplanes with Amendment 25–64 in their certification basis must be ''full-up'' (*i.e.*, meet all the requirements of § 25.562). We also contend that newly manufactured airplanes, regardless of their certification basis, should meet all the requirements of § 25.562 by October 27, 2009.

Pre-Amendment 25–64 Aircraft

Airbus states that requiring 16g seats on pre-Amendment 25–64 aircraft would force many changes in the surrounding cabin, as well as the supporting structure. Airbus states that, for aircraft not having § 25.562 in their certification basis, there is no easy ''take out'' and ''fit in a new part'' solution, as their cabin interiors are not designed to address the new requirement. Airbus recommends that FAA provide guidance on how installation criteria have to be considered for pre-Amendment 25–64 aircraft programs.

FAA Response: The FAA acknowledges that requiring 16g seats on pre-Amendment 25–64 airplanes will require airframe manufacturers to make changes to these airplanes. However, this rule provides enough time for airframe manufacturers to determine the best way to comply with this final rule, whether it be through the use of new seating arrangements, seat and/or cabin interior design modifications and/or new, cost-effective technologies (both for the seats and the cabin interior).

Certification Costs

Boeing states that seat certification streamlining activities have not materially improved the cost or time needed to certify seats. Boeing believes the use of a single seat track for dynamic testing would help.

FAA Response: The FAA received information from industry in June of 2003 that set forth practices that would result in considerable savings in both costs and time associated with certifying seats. This information was developed partly as a result of activities initiated under the seat certification streamlining efforts. However, in both the regulatory evaluation supporting the SNPRM and the regulatory evaluation supporting this final rule, we made no use of anticipated or realized reductions in cost from the results of the seat certification streamlining efforts.

As to Boeing's comment about the use of a single seat track for dynamic testing, this proposal can be addressed under the policy review process in Part 1 of the Seat Certification Streamlining Effort or discussed with the Transport Airplane Directorate outside the Streamlining Effort.

Compliant Installation Not Possible for Certain Seats

Airbus believes there might be cases where a compliant installation is not possible for a given seat. For example, swivel cabin attendant seats arranged in cabin zones restricted in space might not be certifiable to the new standard. This scenario would require Airbus to install fixed cabin attendant seats under the rule.

ATASCO agrees, stating that cabin interior re-design may decrease the number of passenger seats.

FAA Response: While the FAA acknowledges that some seats may present more difficulties than others to comply with this final rule, we believe that only one standard should apply to all seats in the passenger cabin. We also believe this rule provides enough time for airframe manufacturers to address this concern by using new seat arrangements, design modifications, and cost-effective new technologies, both for seats and the cabin interior.

Average/Standard Track Crown

Boeing states that we should define an average track crown. Boeing believes that this is consistent with other conventions used in the dynamic testing and certification of seats.

In addition, Boeing recommends that FAA allow a specific seat track crown section to be used as a ''standard track'' for all certification testing and compliance findings. Boeing states that this would reduce the number of required tests for certifying seats, while still allowing the seat to be fully substantiated for the dynamic loads.

ATA concurs, stating that, for streamlining seat approval, the FAA should allow the use of a new industry-standard seat track in the dynamic testing of seats in conjunction with TSO–C127 or § 25.562. The specific configuration of this standard track could be defined by a joint industry-FAA initiative.

FAA Response: The FAA disagrees that this rule should address the issue of allowing for the use of a generic track crown. The current dynamic standard requires that the seat remain attached to the floor throughout dynamic testing. This requires that a seat track representative of the one installed on the airplane be used for dynamic testing. As such a proposal would require a change to § 25.562, it is outside the scope of this rulemaking action.

We would welcome adoption by industry of a standardized seat track that meets all of the requirements for dynamic testing. Industry proposals of this nature can be submitted to the FAA and evaluated under the policy review process in Part 1 of the Seat Certification Streamlining Effort or discussed with the Transport Airplane Directorate outside the Streamlining Effort.

Full-Scale Dynamic Tests Preferable to Component Tests

AFA states that a migration from full-scale dynamic testing to component tests should be resisted, as it will likely lead to a proposal to eliminate the former. AFA's comments praise the virtue of full-scale dynamic tests, as they evaluate how the seat, restraint, occupant, and the near-vicinity aircraft interior interact.

FAA Response: The FAA does not see component testing as a substitute for full-scale dynamic testing for first time approvals. We have said that component testing can be accepted only for design changes to seats that have been previously approved using the full-scale dynamic tests required by § 25.562. We believe that component testing can be utilized effectively to integrate design changes that may improve safety but that would otherwise not be integrated

if full-scale testing were required for every change. We share AFA's concern about the fidelity of component testing and the extent that it could be used in the future for seat approvals. There are no current policies that allow component testing without confirmation of the original design using full-scale dynamic testing.

Track Failure During Testing

Sicma recommends that seats tested to a ''16g compatible'' standard be accepted and not subject to more testing. Sicma states that dynamic testing has already been accomplished, and it has never had a track failure on a 14g down test.

FAA Response: The FAA does not agree with Sicma's recommendation. We note that track failures are most likely to occur during the 16g longitudinal test and that track failures during a 14g down test are extremely rare. Also, we believe that, for newly manufactured airplanes, full compliance to § 25.562 is readily achievable due to the current knowledge and capabilities in dynamic seat design and certification. The four-year period before compliance with the rule is required provides enough time to develop feasible solutions to meeting all the occupant protection criteria of § 25.562.

Flawed Testing

An individual commenter states that flaws exist in the tests used to gather supporting data for the HIC portion of § 25.562. Based on these flaws, the HIC test can be proven to have no technical merit and could lead to designs with lower levels of safety. This individual recommends we remove the criterion from future regulations involving aircraft seating.

FAA Response: The commenter did not offer any specifics as to why he believes flaws exist in the tests. The FAA issued Amendment 25–64 based on the recommendations of GASP. These recommendations have been the foundation for technical standards developed by industry and guidance developed by us with public participation. We continue to review these standards and policies with industry groups and make appropriate changes, when necessary. So far, these standards and policies have served the aviation community well. We welcome any valid data to support the commenter's concerns.

TSO–C127

ATA and Boeing recommend that new seats installed on new production aircraft should meet TSO–C127, ensuring dynamic seat testing. They would like to see this requirement become effective four years from the rule's effective date. ATA and Boeing believe that installation limitations relative to seat dynamic testing should be consistent with the airplane's type certificate. For example, airplanes that have partial § 25.562 compliance as part of their certificate basis would continue to contain TSO–C127 compliant seats, while fully compliant airplanes would continue to contain fully compliant 16g seats.

FAA Response: For newly manufactured airplanes, the FAA believes that flight attendant and passenger seats should comply with all the requirements of § 25.562. Allowing installation limitations consistent with the airplane's original type certificate would undermine the intent of the rule and would result in only limited or no compliance with § 25.562. We seek to establish the highest level of safety for passenger and flight attendant seats that is currently practicable throughout the part 121-fleet. The commenters' proposal would do little more than allow partially compliant 16g seats to be accepted in newly manufactured airplanes and would not significantly alter the current configuration of seats in the existing fleet.

Ability of Tracks To Withstand Loads Imposed by 16g Seats

ATASCO questions the ability of existing seat tracks to withstand the loads imposed by 16g seats. The group goes on to recommend that FAA examine the strength of seat tracks in airplane models other than the B–777.

FAA Response: When the performance requirements currently in § 25.562 were developed, the strength of tracks then on airplanes was evaluated. Using analysis and testing, we determined that track strengths were satisfactory when coupled with a seat designed to meet the dynamic criteria. Based on this previous analysis and testing, we do not consider any further testing to be required.

General Comments

No Accident Data To Support Need for 16g Seats

Based on recent safety improvements, RAA believes it is reasonable to project that there will be no more than 2 or 3 impact-survivable accidents within the next 20 years. Since RAA also projects that 80% of the seats will be 16g compliant in the next three years without a rule mandate, RAA believes that the impact-survivable accident rate in regional airplanes without 16g compliant seats will be less than one accident in the next 20 years. Therefore, RAA believes that the proposed rule will not make any difference in reducing the fatalities or serious injuries that may occur in the regional fleet.

FAA Response: The FAA believes the Cherry Report accurately determines the fatalities and serious injuries that could have been averted had 16g seats been installed in those airplanes studied. Despite recent improvements made in accident prevention, we strongly believe that the potential for impact-survivable accidents still exists. The use of 16g seats will improve passenger survivability in such accidents in the future irrespective of the type of aircraft in which these seats are installed.

As for regional carriers who operate smaller transport category airplanes, these airplanes have less energy absorbing structure below the floor than larger transport category airplanes. Therefore, we believe that these carriers might benefit even more from the installation of seats that meet the dynamic testing requirements than their counterparts that operate larger transport category airplanes.

Lack of a Convincing Safety Argument

AEA believes that some aspects of the proposed rule have not been fully thought through since they are missing a convincing safety case and impact assessment. AEA also believes that the FAA does not give credit for investments in improved seats already made by airlines.

FAA Response: The FAA did consider and give credit for airplanes that used seats that complied with parts of § 25.562 or were simply later production seats believed to perform better than traditional early model 9g seats. The study, ''Improved Seats in Transport Category Airplanes: Analysis of Options,'' prepared by the FAA's Office of System Safety (ASY)(November 2000) grouped the current fleet into 5 categories. These categories included aircraft with seats ranging from early 9g seats to fully compliant 16g seats.

The 2003 Cherry Report Addendum updated their data and concludes that fully compliant 16g seats could have averted 45 fatalities and 40 serious injuries over the analysis period. HIC improvement accounts for 39% of the averted fatalities and 46% of the averted serious injuries.

Suggested Alternatives

Several commenters recommend the following in addition or as an alternative to the proposed rule to increase survivability in impact-survivable accidents:

(1) Using rearward facing seats (five commenters);

(2) Making child restraint improvements and regulatory changes that would mandate securing all children in safety seats (six commenters);

(3) Using three-point harness restraints (one commenters) or shoulder harnesses (one commenter);

(4) Using air bags (one commenter);

(5) Improving seat belt security, using fewer seats or changing seating configuration (one commenter); and

(6) Using standardized seat belt latching mechanisms or, without such standardization, telling passengers about any variations (one commenter).

Finally, one commenter states that the FAA should focus our attention on flight crew safety and health issues rather than on improving seats.

FAA Response: While the FAA accepts that some of these alternatives may improve accident survivability, these commenters do not offer any persuasive evidence why we should abandon the approach contained in the SNPRM to adopt a suggested alternative. We have performed extensive research on the subject of improving survivability in impact-survivable accidents and have explored many options. We believe the approach taken in this final rule is the most effective and efficient way to improve survivability in impact-survivable accidents.

As for the comment about flight crew safety and health issues, we believe our attention should be on both improving seats and flight crew safety and health issues. We have several offices that deal with flight crew safety and health issues and these offices are continuously analyzing ways to further improve these areas. However, improving seats in transport category aircraft is also an important issue. Our focus on this issue does not detract in any way from our continuing commitment to address flight crew safety and health issues.

Rule Not Consistent With Safer Skies Partnership or Commercial Aviation Safety Team (CAST) Objectives

Boeing and ATA believe the proposed rule is not consistent with the Safer Skies partnership or Commercial Aviation Safety Team (CAST) objectives, which are intended to direct safety investment where it has the most leverage.

FAA Response: The FAA started the 16g seat initiative in response to a directive from Congress before the existence of CAST. We believe that we need to complete the 16g seat initiative since the safety concerns that led to its initial development are still valid.

We also recognize that considerable progress has been made under CAST to reduce the accident rate. In fact, we used a lower accident rate in predicting the benefits of this final rule in addition to the rate used for the SNPRM. CAST goals are to dramatically reduce accidents through accident prevention. However, we recognize that impact-survivable accidents can still occur, and this rule focuses on protecting occupants when these accidents do occur.

Rule Will Not Influence Types of Accidents With Most Fatalities

Boeing states the proposed rule will not influence the types of accidents that have the most fatalities.

In addition, Boeing contends that other safety initiatives will serve to reduce the number of accidents, further reducing the benefits of the proposed rule.

FAA Response: While this rulemaking action does not necessarily address those accidents that result in the most fatalities, it does improve survivability for passengers and crewmembers when impact-survivable accidents occur. Regardless of improvements in accident prevention, there is still a need to improve passenger and crewmember survivability since other accident prevention measures have not eliminated all impact-survivable accidents.

HIC Compliance

AMSAFE recommends requiring HIC compliance in all situations, regardless of strike hazard fidelity.

FAA Response: The FAA is using existing policy for meeting HIC requirements and does not intend to expand the scope or definition of compliance with HIC.

Inclusion of HIC

ATA states that most of the benefits of improved seats are achieved through structural criteria, not HIC. Adding HIC only creates significant costs without commensurate benefits.

ATA also argues that the FAA has not accurately projected the cost of front row HIC. HIC requirements, especially front row HIC, are expensive and have not been proven to have a significantly higher value.

FAA Response: The FAA agrees that most of the benefits of improved seats come from compliance with the structural requirements. While the Cherry Report (upon which the SNPRM's benefits were based) does not assess the specific safety benefits from HIC improvements, the Cherry Report Addendum concludes that 39% of the fatalities and 46% of the serious injuries averted by installing fully compliant 16g seats can be attributed to HIC improvements.

In our regulatory evaluation supporting this final rule, the cost of seat certification included HIC for all seats, front row as well as row-to-row. The FAA recognizes that front row HIC requirements can lead to compliance alternatives that cost the operator more than row-to-row HIC compliance alternatives. However, we do not agree that the value for the front row alternative must be commensurate with the row-to-row alternative. To do so implies that passengers in the front row should be given a lower protection level than passengers in the following rows simply because it may cost more to protect those passengers in the front row. We do not agree with this reasoning.

Quarterly Reports

NADA/F supports the proposed rule. It also recommends that airlines file quarterly public reports updating their progress in complying with the rule.

FAA Response: The FAA believes NADA/F was directing this comment at seat replacement on existing airplanes. Because the final rule will not require seats on the existing fleet to be upgraded, the comment is no longer relevant. When mandating actions similar to that set forth in this rule, we typically mandate only compliance time frames and do not require progress reports.

Applicability to Part 135 Operators, Flight Deck Seats, and Cargo-Only Airplanes

IBT states that the rule should address part 135 operators, flight deck seats and seats on cargo-only aircraft. IBT states that the omission of these seats is not consistent with our stated philosophy of ''one level of safety'' and should be remedied.

NADA/F also recommends that part 121 air cargo aircraft meet the new standards within three years of this final rule.

FAA Response: Regarding flight deck seats, the FAA's review of the accidents studied showed that the existing seats performed well in impact-survivable accidents. Therefore, we do not see any need to mandate any crashworthiness improvements to these seats.

As for cargo-only airplanes, the final rule does not apply to these airplanes because they do not carry passengers for compensation or hire. However, transport category aircraft manufactured

four (4) years after the effective date of this final rule that have convertible or combination configurations will have to meet the same standards required for all-passenger carrying transport category airplanes operated under part 121 because those airplanes carry passengers.

As for transport category airplanes operated under part 135, at the time Notice No. 88–8 was published, a significant number of transport category airplanes were operated under part 135. Accordingly, Notice 88–8 proposed that seats on transport category airplanes operated under part 135 in air carrier operations or scheduled intrastate common carriage meet the same standards as seats on transport category airplanes operated under part 121. In 1995, we issued Amendment Nos. 119, 121–251, and 135–58, ''Commuter Operations and General Certification and Operations Requirements;'' Final Rule (60 FR 65832; December 20, 1995)(the Commuter Rule). The Commuter Rule requires all operators conducting scheduled passenger-carrying operations in airplanes that have passenger-seating configurations of 10 through 30 seats (excluding crewmember seats) and in turbojet airplanes regardless of seating configuration that formerly conducted operations under part 135, to conduct those operations under part 121. As a consequence of the Commuter Rule, the operation of virtually all transport category airplanes previously operated under part 135 now comes under part 121. Only nonscheduled, on-demand operations remain in part 135. Since the scope of this final rule is limited to transport category airplanes, it is no longer necessary to apply to this rule to part 135 operations.

Expedited Final Rule Issuance

NADA/F recommends that we issue the final rule by January 31, 2003.

FAA Response: Because the comment period did not close until March 3, 2003, the FAA was unable to meet the commenter's requested issue date. Also, after a comment period closes, we must analyze and address each comment. Other considerations, such as reviewing alternatives based on public comments, can further lengthen that process. Although we understand the commenter's intent, we must develop a final rule in accordance with all statutory and procedural requirements.

Rule Should Not Apply to Certain Aircraft

ATA recommends this rule not apply to aircraft that do not have § 25.562(c)(5) in their original certification basis.

FAA Response: The FAA contends that all flight attendant and passenger seats in newly manufactured airplanes should meet the requirements of § 25.562, including § 25.562(c)(5). Occupants must be protected from head trauma as accident investigations have shown it to be a primary cause of serious injuries and fatalities in impact-survivable aviation accidents. In addition, in developing the recommendation that led to § 25.562(c)(5), GASP made it a primary goal to reduce the likelihood of fatal or serious head trauma, concussion, and unconsciousness to airplane occupants. We found this goal to be appropriate for all of civil aircraft, and it has therefore been addressed in the new emergency landing dynamic conditions applicable to aircraft certificated under parts 23, 25, 27 and 29.

Expedited Compliance Date

Several commenters recommend an expedited compliance date:

(1) NADA/F recommends that all newly constructed aircraft be equipped with ''safer'' seats by June 30, 2003, or sooner;

(2) RECARO recommends a shortened compliance period of two years to replace the proposed four-year period for newly manufactured airplanes;

(3) IBT believes the four-year compliance period for newly manufactured aircraft is problematic considering the industry's current economic situation.

FAA Response: For newly manufactured airplanes, we believe the current compliance time frame of four years after the effective date of the final rule is reasonable. We believe this time frame provides enough time for industry to adjust to this new requirement while still ensuring that an improved safety level is reached in the near future. Although we would like to see the improved seats installed as quickly as possible, shortening that compliance time frame will drive costs up disproportionate to the benefits.

Concept of 16g Compatible Seats

ATA believes the proposed rule ignores 16g compatible seats.

FAA Response: Although the concept of 16g compatible seats was recognized in the 1998 Public Meeting, it applied only to the existing fleet. Since the final rule will not apply to the existing fleet, the commenters' concerns no longer apply. However, the FAA wants to clarify that the 1988 rulemaking initiative did not recognize the concept of 16g compatible seats. The 1988 NPRM would have required seats to meet all the requirements of § 25.562 for part 121 and part 135 operations, including all cargo operations. Additionally, the SNPRM and the Options Study did give credit for having partially compliant seats installed.

Joint Aviation Authorities Technical Standard Order (JTSO) Approval

Sicma recommends that the FAA consider accepting JTSO approval for determining compliance with the proposed rule. Sicma believes that this would streamline the certification process, as the requirement to have an FAA Technical Standard Order (TSO) in addition to the JTSO approval is redundant.

FAA Response: The FAA does not recognize a JTSO or a European Aviation Safety Agency Technical Standard Order (ETSO) approval on its own. A separate FAA Letter of TSO Design Approval is required. When the JTSO/ETSO is identical to the FAA TSO, the FAA Letter of TSO Design Approval can be issued with a minimum of review. Also, an approval to TSO–C127a is only an approval to a standard. It is not approval for installation. Installation approval is based on an airplane's type design and can vary depending on the specific airplane model. This rule serves to make one standard, that contained in § 25.562, applicable to all newly manufactured airplanes. TSO approval of a seat does not necessarily ensure compliance with § 25.562, although it is generally the basis for that certification.

Harmonization

ATASCO CSWG asks the FAA to consider issues of worldwide harmonization when moving forward with these regulatory changes.

NADA/F agrees, recommending that we do all that is possible to promote the safest seats as a harmonization standard with the JAA.

FAA Response: Although the FAA supports harmonization when appropriate, we believe that aviation safety will improve significantly by issuing this final rule and, therefore, do not want to further delay its implementation while undertaking harmonization efforts. We also note that the seat certification streamlining effort is addressing harmonization issues.

Impact on Seating

Airbus comments that applying § 25.562 to all passenger seats would compel changes in aircraft seating configurations. For example, it may create one row of seating without the ability to recline. Airbus believes that FAA has not considered the economic impact of these changes.

FAA Response: The FAA acknowledges that this is a possibility. However, we believe there is enough time from the effective date of the rule for industry to develop cost-effective solutions that will not require changes in aircraft seating configurations, or actions such as installing seat belt air bags.

As for the comment about the ability of seats to recline, we are aware that, as of today, many seats located at or near overwing exits do not recline. Airbus did not present any data to show that this has created an economic impact.

Tax Incentives

A commenter proposes tax incentives to accelerate compliance with the proposed rule.

FAA Response: It is beyond the scope of the FAA's authority to effectuate such changes.

Inclusion of Military Aircraft

NADA/F recommends that the military be directed by Executive Order, or whatever rulemaking is available, to have all military aircraft upgraded with safer seats. NADA/F believes the compliance standards should be as high as, or higher than, those for commercial aircraft.

FAA Response: This request is outside the scope of this proposal.

Expedited Testing

NADA/F recommends that we expedite any testing needed to proceed with safer seats for all aircraft.

FAA Response: The FAA believes the standards set forth in current emergency landing dynamic conditions adequately improve seat safety over 9g static seats. These standards were developed after extensive research and testing by the FAA, NASA, and industry. The standards were developed to provide improved safety for passenger and crewmembers based on the seat technology of the day. Because we consider these standards to be adequate, no additional testing is needed at this time.

Air Bag TSO

AMSAFE recommends the timely issuance of an air bag TSO as an acceptable means of compliance with § 25.562.

FAA Response: Currently, the Society of Automotive Engineers (SAE) Seat Committee is working on an Aerospace Standard for inflatable restraint systems. Once the SAE issues that document, the FAA may consider issuing a TSO for inflatable restraint systems that incorporates that document.

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule (1) has benefits that justify its costs, is a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Total Costs and Benefits of This Rulemaking

This final rule amends FAA regulations dealing with improved crashworthiness standards for passenger and flight attendant seats on new transport category airplanes used in part 121 passenger-carrying operations. The rule requires all such airplanes type-certificated after January 1, 1958 (starting with those manufactured four years after this rule's effective date) to comply with all the requirements of 14 CFR 25.562, which is applicable to airplane models for which an application for a type-certificate is made on or after June 16, 1988. Therefore, no action should be necessary to bring those airplanes into compliance with this final rule assuming that they comply fully with § 25.562. Essentially, from an incremental cost/benefit standpoint, the new production airplanes to be affected by this rule are those models that were type-certificated after January 1, 1958 and before June 16, 1988 and derivatives of such models for which an application for an amended type-certificate was made after January 1, 1958.

Total Costs of This Rulemaking

The total costs of this rulemaking, over the analysis period, are $34.7 million (or, $22.3 million and $13.3 million in present value at 3% and 7%, respectively). These costs are composed of seat belt air bags costs of $19.3 million (or, $12.4 million and $7.5 million in present value at 3% and 7%, respectively), additional fuel burn costs of $12.6 million (or, $7.7 million and $4.2 million in present value at 3% and 7%, respectively), and certification and testing of the improved seats of $2.7 million (or $2.2 million and $1.6 million in present value at 3% and 7%, respectively).

Total Benefits of This Rulemaking

The total benefits of this rulemaking are $78.9 million (or, $47.9 million and $26.4 million in present value at 3% and 7%, respectively). The benefits were calculated by estimating the number of fatalities and serious injuries that could be averted as a result of installing the improved seats beginning in 2009; averted casualties are based on estimated future enplanements of new-production airplanes now to be covered by improved seat standards.

Total Costs and Benefits of This Rulemaking

In summary, the total costs of this rulemaking, over the analysis period are $34.7 million (or, $22.3 million and $13.3 million in present value at 3%

and 7%, respectively). The total benefits of installing fully compliant 16g seats are $78.9 million (or, $47.9 million and $26.4 million in present value at 3% and 7%, respectively). This rulemaking is cost-beneficial with a benefits to cost ratio of 2.27 to 1 (or, 2.15 to 1 and 1.98 to 1, when underlying estimates are in present value at 3% and 7%, respectively). Therefore, the FAA contends that the quantifiable benefits of the rule adequately justify the costs of the rule.

Who Is Potentially Affected by This Rulemaking?

This rulemaking affects anyone who operates transport category airplanes used in part 121 passenger-carrying operations on or after October 27, 2009.

Our Cost Assumptions and Sources of Information

- Discount rate—3% and 7%.
- Period of Analysis 2005–2034.
- Monetary values expressed in 2004 dollars.
- Cost of certificating and installing a fully compliant 16g passenger seat instead of a 9g passenger seat, $212.
- Cost of certificating and installing a fully compliant 16g passenger seat instead of a partially compliant 16g (*i.e.*, without HIC) passenger seat, $126 ($32 non-recurring and $94 recurring).
- Cost of certificating and installing a fully compliant 16g flight attendant seat instead of a partially compliant flight attendant seat, $302 ($135 non-recurring, and $167 recurring).
- Acquisition cost of installing a seat belt air bag, for front-row HIC requirement, $722 ($700 seat belt, $22 certification).[3]
- Annual maintenance cost and one-time overhaul cost of seat belt air bag, $150, and $388, respectively.
- Increased weight per aircraft, for passenger seat requirements, 36 pounds.
- Increased weight per aircraft, for flight attendant seat requirements, 13 pounds.
- Fuel costs are based on FAA's forecast data.

[3] We have assumed the cost associated with this rule based on the cost of installing a seat belt equipped with an air bag (inflatable restraints). Other options, such as shoulder harnesses, y-belts, padding to the bulkhead or increasing the distance between the bulkhead and the seat back, may also be sufficient to meet the HIC requirements of this rule and may be less costly. We believe the costs of this rule could be much lower when a combination of options is used. For a complete explanation of the estimated costs of this rule, please read the final regulatory evaluation located in the docket.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The rule will affect manufacturers of part 25 transport category airplanes type-certificated after January 1, 1958 and manufactured after four years following the effective date of this final rule. It will also affect air carriers conducting operations under part 121. For manufacturers and part 121 operators, a small entity is one with 1,500 or fewer employees. No part 25 airframe manufacturer has 1,500 or fewer employees. Consequently, the rule will not have a ''significant economic impact on a substantial number'' of small part 25 manufacturers.

There are approximately 100 part 121 operators in the potential pool of small entities. In the regulatory evaluation for the SNPRM, the FAA performed a detailed analysis of the economic impacts on 33 of these operators who clearly: (1) Had less than 1,500 employees (the size threshold for classification as a small entity); (2) were not subsidiaries of larger organizations; and, (3) reported operating revenue to the Department of Transportation. The FAA believed these 33 were representative of the affected small firms. The FAA performed a detailed analysis of potential small-entity impacts on the small operators and determined that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA invited comments on this assessment from interested and affected parties. Though no comments were received on FAA's small-entity-impact methodology, the FAA did receive comments on the significant costs for all operators (whether small or not) to retrofit the existing fleet—especially in light of the difficult financial condition of operators in recent years. The FAA removed the SNPRM's retrofit requirement, therefore eliminating improved seat costs for the existing fleet.

Consequently, the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities (manufacturers or operators).

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will impose the same costs on domestic and international entities and thus have a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We didn't receive any comments, and we have determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Safety, Transportation.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Part 121 of Chapter I of Title 14, Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

■ 2. Amend § 121.311 by adding paragraph (j) to read as follows:

§ 121.311 Seats, safety belts, and shoulder harnesses.

* * * * *

(j) After October 27, 2009, no person may operate a transport category airplane type certificated after January 1, 1958 and manufactured on or after October 27, 2009 in passenger-carrying operations under this part unless all passenger and flight attendant seats on the airplane meet the requirements of § 25.562 in effect on or after June 16, 1988.

Issued in Washington, DC, on September 20, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 05–19208 Filed 9–26–05; 8:45 am]

BILLING CODE 4910–13–P

Reader Aids

Federal Register

Vol. 70, No. 186

Tuesday, September 27, 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
55705–56104 23
56105–56342 26
56343–56560 27

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
7935 56341

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
Notices:
Notice of September 21, 2005 55703
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

5 CFR

Proposed Rules:
250 54658

7 CFR

2 55705
97 54609
371 55705
500 55706
762 56105
905 54235
916 56107
917 56107
922 54833
946 53723
948 55711
966 53537
985 55713
993 54469
1033 56111
1216 55225
1405 52283
1430 56113

Proposed Rules:
56 56139
57 56139
205 54660
271 55776
273 55776
275 55776
277 55776
319 55036
925 56378
944 56378
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:

225 53320
741 55308
XVII 53105

14 CFR

3 54822
25 56343
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, 56140, 56143, 56145, 56344, 56347, 56349, 56351, 56355, 56358, 56361
61 ....53560, 54810
63 54810
65 54810
71 ....52012, 52288, 52903, 52905, 53562, 53917, 53918, 53919, 53920, 53921, 54837, 55250, 55531, 55533, 56365, 56366
73 ....54837, 56366
95 52013
97 ....52288, 54624
121 ....54810, 56542
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, 56378, 56381, 56383, 56386, 56389
71 ....53594, 53595, 53597, 53598, 55325, 53691
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

45 55717
385 55723

Proposed Rules:

Ch I 55796
38 53117
153 52328
157 52328
365 55805
366 55805
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:

20 56394
135 56409
210 55038
211 55038
212 55038
310 52050
510 56394
514 56394
516 56394
880 53326

22 CFR

41 52292
51 53922
231 56102

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, 56418
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
250 56119
256 56119
938 52916

Proposed Rules:

57 ....53280, 55018
250 52953
906 54490

31 CFR

575 54258

Proposed Rules:

103 55217

32 CFR

199 55251
272 55725
706 52302

Proposed Rules:

310 53135

33 CFR

100 ....52303, 52305, 54478, 56367, 56369, 56371
117 ....52307, 52917, 53070, 54637, 55727, 56373
165 ....52308, 53070, 53562, 54447, 54479, 54838, 55252, 55534, 55536, 55539
168 55728

Proposed Rules:

100 ....52052, 52054, 52338
117 ....52340, 52343, 53328, 53604
165 55607

36 CFR

1228 55730

37 CFR

1 ....54259, 56119
2 56119
3 ....54259, 56119
5 56119
10 56119

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, 56129, 56374
60 55568
62 53567
81 ....52926, 55541, 55545, 55550, 55559, 56129
124 53420
174 55254
180 ....53944, 54275, 54281, 54640, 55260, 55263, 55269, 55272, 55277, 55282, 55286, 55293, 55731, 55733, 55740, 55748, 55752, 55761
228 ....53729, 55770
260 53420
261 53420
267 53420
270 53420
271 56132

300 .....52018, 54286, 55296, 55774, 55775
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, 56418
271.....56150, 56419
272.....56419
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
447.....55812
455.....55812

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
Proposed Rules:
162.....55990

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
79.....56150

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, 56318
10.....56318
12.....56318
16.....56314, 56318
17.....54878
31.....54878
32.....54878, 56314
35.....54878
42.....54878
44.....56318
45.....54878
49.....54878
51.....54878
52 .....54878, 56314, 56318
53.....54878
207.....54693
216.....54694
217.....54695
239.....54697, 54698
252.....54695, 54698
9904.....53977

49 CFR

105.....56084
106.....56084
107.....56084
110.....56084
171.....56084
172.....56084
173.....56084
176.....56084
177.....56084
178.....56084
179.....56084
180.....56084
571.....53079, 53569
578.....53308
585.....53101
588.....53569
Proposed Rules:
571.....53753, 56425
572.....54889

50 CFR

17 .....52310, 52319, 56212
20 .....54483, 55666, 56028, 56532
32.....54146, 56376
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, 56138, 56377
Proposed Rules:
Ch. I.....54700
17 .....52059, 53139, 53141, 54106, 54335, 54701, 56426, 56434
92.....55692
600.....53979
622 .....53142, 53979, 54518, 56157
635.....53146, 55814
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 27, 2005

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Nectarines and Peaches grown in—
California; published 9-26-05

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan priorities list; published 7-29-05

INTERIOR DEPARTMENT
Fish and Wildlife Service
Hunting and fishing:
Refuge-specific regulations
Correction; published 9-27-05

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 8-23-05
Boeing; published 8-23-05
General Electric Co.; published 8-23-05
Saab; published 8-23-05
Turbomeca; published 8-23-05

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
National Driver Register Problem Driver Pointer System; participation and data receipt procedures; published 7-29-05

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]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Animal welfare:
Ferret standards; humane handling, care, treatment, and transportation; comments due by 10-4-05; published 8-5-05 [FR 05-15516]
Plant-related quarantine, domestic:
Imported fire ants; comments due by 10-7-05; published 8-8-05 [FR 05-15623]

AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Reports and guidance documents; availability, etc.:
National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

AGRICULTURE DEPARTMENT
Rural Utilities Service
Telecommunication policies on specifications, acceptable materials, and standard contract forms; comments due by 10-4-05; published 8-5-05 [FR 05-13945]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Groundfish; comments due by 10-3-05; published 9-1-05 [FR 05-17454]
Pollock; comments due by 10-6-05; published 9-21-05 [FR 05-18750]
Pollock; comments due by 10-6-05; published 9-21-05 [FR 05-18751]
West Coast States and Western Pacific fisheries—
Salmon; recreational fishery adjustments; comments due by 10-6-05; published 9-21-05 [FR 05-18854]
West Coast salmon; comments due by 10-6-05; published 9-21-05 [FR 05-18853]

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:
Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

EDUCATION DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Vocational and adult education—
Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT
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]
Electric utilities (Federal Power Act):
Electric Reliability Organization certification and electric reliability standards establishment, approval, and enforcement procedures; comments due by 10-7-05; published 9-7-05 [FR 05-17752]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution; standards of performance for new stationary sources:
Predictive emission monitoring systems; performance specifications; testing and monitoring provisions amendments; comments due by 10-7-05; published 8-8-05 [FR 05-15330]
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Arizona; correction; comments due by 10-6-05; published 9-6-05 [FR 05-17539]
Air quality implementation plans; approval and promulgation; various States:
Oregon; comments due by 10-6-05; published 9-6-05 [FR 05-17537]
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:
Acetic acid; comments due by 10-3-05; published 8-3-05 [FR 05-15148]
Alachlor, etc.; comments due by 10-3-05; published 8-3-05 [FR 05-15335]
C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and propylene glycol; comments due by 10-6-05; published 9-21-05 [FR 05-18724]
Dichlorodifluoromethane, etc.; comments due by 10-3-05; published 8-3-05 [FR 05-15334]
Tebuconazole; comments due by 10-3-05; published 8-4-05 [FR 05-15440]
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:
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]
International telecommunications:
Foreign carriers; blockages or disruptions; harm to U.S. competition and customers; comments due by 10-7-05; published 9-7-05 [FR 05-17795]
Organization:
FM table of allotments procedures and radio broadcast services community of license changes; comments due by 10-3-05; published 8-3-05 [FR 05-15427]

FEDERAL DEPOSIT INSURANCE CORPORATION
Intelligence Reform and Terrorism Prevention Act; implementation:
Senior examiners; one-year post-employment restrictions; comments due by 10-4-05; published 8-5-05 [FR 05-15468]

FEDERAL MARITIME COMMISSION
Ocean shipping in foreign commerce:
Non-vessel-operating carrier service arrangements; comments due by 10-6-05; published 9-2-05 [FR 05-17555]

FEDERAL RESERVE SYSTEM
Electronic fund transfers (Regulation E):
Automated teller machine operators disclosure obligations; official staff interpretation; comments due by 10-7-05; published 8-25-05 [FR 05-16801]
Intelligence Reform and Terrorism Prevention Act; implementation:
Senior examiners; one-year post-employment restrictions; comments due by 10-4-05; published 8-5-05 [FR 05-15468]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare:
Civil monetary penalties, assessments, exclusions, and related appeals procedures; comments due by 10-3-05; published 8-4-05 [FR 05-15291]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
Medical devices—
Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]
Drawbridge operations:
Virginia; comments due by 10-3-05; published 8-19-05 [FR 05-16494]
Wisconsin; comments due by 10-3-05; published 8-17-05 [FR 05-16285]
Regattas and marine parades:
Hampton Roads Sailboat Classic; comments due by 10-3-05; published 9-2-05 [FR 05-17513]
Spa Creek, MD; comments due by 10-3-05; published 9-1-05 [FR 05-17427]

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]
HUD-owned properties:
Multifamily housing projects disposition; purchaser's compliance with State and local housing laws and requirements; comments due by 10-4-05; published 8-5-05 [FR 05-15472]
Mortgage and loan insurance programs:
Home equity conversion mortgage insurance; line-of-credit payment options; comments due by 10-4-05; published 8-5-05 [FR 05-15473]

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—
Cactus ferruginous pygmy-owl; comments due by 10-3-05; published 8-3-05 [FR 05-15302]
California tiger salamander; comments due by 10-3-05; published 8-2-05 [FR 05-14992]
Pygmy owl; hearing; comments due by 10-3-05; published 9-7-05 [FR 05-17754]
Findings on petitions, etc.—
Wright fishhook cactus; comments due by 10-3-05; published 8-3-05 [FR 05-15301]

INTERIOR DEPARTMENT
Administrative wage garnishment; collection of debts; comments due by 10-3-05; published 8-3-05 [FR 05-15258]

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; oil, gas, and sulphur operations:
Marine mammals and threatened and endangered species protection; lessee plans and information submission requirements; comments due by 10-6-05; published 9-6-05 [FR 05-17543]

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Economic Growth and Regulatory Paperwork Reduction Act of 1996; implementation—
Regulatory review for reduction of burden on federally-insured credit unions; comments due by 10-5-05; published 7-7-05 [FR 05-13310]

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]

PERSONNEL MANAGEMENT OFFICE
Allowances and differentials:
Cost-of-living allowances (nonforeign areas)—
Rate changes; comments due by 10-3-05; published 8-4-05 [FR 05-15097]
Employment:
Examining system; direct-hire authority to recruit and appoint individuals for shortage category positions; comments due by 10-3-05; published 8-4-05 [FR 05-15259]

SMALL BUSINESS ADMINISTRATION
Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:

BAE Systems (Operations) Ltd.; comments due by 10-6-05; published 9-6-05 [FR 05-17610]
Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 10-3-05; published 9-1-05 [FR 05-17403]
Learjet; comments due by 10-7-05; published 8-23-05 [FR 05-16752]
McDonnell Douglas; comments due by 10-3-05; published 8-18-05 [FR 05-16363]
Pacific Aerospace Corp.; comments due by 10-5-05; published 8-19-05 [FR 05-16442]
Saab; comments due by 10-3-05; published 9-1-05 [FR 05-17404]
Airworthiness standards:
Special conditions—
Boeing Model 777 Series Airplane; comments due by 10-7-05; published 8-23-05 [FR 05-16745]
Gulfstream Model G150 airplane; comments due by 10-6-05; published 8-22-05 [FR 05-16517]
Class B, C, and D airspace; comments due by 10-7-05; published 8-8-05 [FR 05-15567]
Federal airways; comments due by 10-7-05; published 8-23-05 [FR 05-16748]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Child restraint systems—
Improved test dummies, updated test procedures, and extended child restraints standards for children up to 65 pounds; comments due by 10-3-05; published 8-3-05 [FR 05-15268]
Controls, telltales, and indicators; comments due by 10-3-05; published 8-17-05 [FR 05-16325]
Low-speed vehicle; definition; comments due by 10-3-05; published 8-17-05 [FR 05-16323]
Occupant crash protection—
Seat belt assemblies; comments due by 10-6-05; published 8-22-05 [FR 05-16524]

TREASURY DEPARTMENT

Comptroller of the Currency

Intelligence Reform and Terrorism Prevention Act; implementation:
Senior examiners; one-year post-employment restrictions; comments due by 10-4-05; published 8-5-05 [FR 05-15468]

TREASURY DEPARTMENT

Thrift Supervision Office

Intelligence Reform and Terrorism Prevention Act; implementation:
Senior examiners; one-year post-employment restrictions; comments due by 10-4-05; published 8-5-05 [FR 05-15468]

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. 3761/P.L. 109–72

Flexibility for Displaced Workers Act (Sept. 23, 2005; 119 Stat. 2013)

H.R. 3768/P.L. 109–73

Katrina Emergency Tax Relief Act of 2005 (Sept. 23, 2005; 119 Stat. 2016)

Last List September 23, 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.