Federal Register

10–26–05 Wednesday
Vol. 70 No. 206 Oct. 26, 2005

Pages 61713–61884

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. 206

Wednesday, October 26, 2005

Agriculture Department
See Forest Service
See Grain Inspection, Packers and Stockyards Administration

Census Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61785–61786

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 61828

Coast Guard
RULES
Drawbridge operations:
Maryland, 61738–61739
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Tampa Bay, FL, 61739–61741

Commerce Department
See Census Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61785

Comptroller of the Currency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61880–61881

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Savannah River Site, SC, 61791

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Utah; correction, 61741–61742
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 61750–61752
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61808–61814
Air pollution control:
Citizens suits; proposed settlements—
American Chemistry Council et al., 61814–61815
Confidential business information and data transfer, 61815–61816
Pesticide registration, cancellation, etc.:
Endothall, 61816–61818
Oxydemeton-methyl, 61818–61819
Reports and guidance documents; availability, etc.:
Preliminary 2006 Effluent Guidelines Program Plan, 61819–61820

Export-Import Bank
NOTICES
Portugal; photovoltaic solar modules; finance application, 61820

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 61720–61721
Boeing, 61716–61720, 61727–61729
Empresa Brasileira de Aeronautica S.A. (EMBRAER), 61729–61733
Pilatus Aircraft Ltd., 61723–61727
Sikorsky Aircraft Corp., 61721–61723
Area navigation routes, 61733–61735
Class B airspace; correction, 61883
Class E airspace, 61735–61736
NOTICES
Aeronautical land-use assurance; waivers:
Delta County Airport, MI, 61876–61877

Federal Communications Commission
RULES
Common carrier services:
Commercial mobile radio services—
Truth-in-billing and billing format; descriptions and plain language requirements, 61747–61748
Digital television stations; table of assignments:
Texas, 61748
Frequency allocations and radio treaty matters:
Advanced wireless services, 61742–61747
Radio stations; table of assignments:
Kansas, 61748–61749
Texas, 61749
PROPOSED RULES
Frequency allocations and radio treaty matters:
Advanced wireless services, 61752–61762
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61820–61823
Meetings:
Consumer Advisory Committees, 61823
Radio services, special:
Private land mobile radio services—
Wave 2 National Public Safety Planning Advisory Committee regions; 800 MHz public safety interference proceeding, 61823–61825
Rulemaking proceedings; petitions filed, granted, denied, etc., 61825
Senior Executive Service Performance Review Board; membership, 61825

Federal Energy Regulatory Commission
NOTICES
Complaints filed:
Glendale, CA, 61803–61804

Electric rate and corporate regulation combined filings, 61804–61805
Environmental statements; availability, etc.:
Midwestern Gas Transmission Co., 61805–61806
Environmental statements; notice of intent:
Transcontinental Gas Pipe Line Corp., 61806–61807
Hydroelectric applications, 61807–61808
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission, LLC, 61791
Aquila, Inc., 61792
ArcLight Energy Partners Fund I, L.P., et al., 61792
Calpine Energy Services, L.P., et al., 61792–61793
CenterPoint Energy Gas Transmission Co., 61793–61794
Cheyenne Plains Gas Pipeline Co. LLC, 61794
Colorado Interstate Gas Co., 61794–61795
ConocoPhillips Co., 61796
Dominion Transmission, Inc., 61796
Garden Banks Gas Pipeline, LLC, 61796–61797
High Island Offshore System, L.L.C., 61797
Lake Road Holding Co., LLC, 61797
Midwest Independent Transmission System Operator, Inc., 61797–61798
Mojave Pipeline Co., 61798
New York Power Authority, 61798–61799
Petal Gas Storage, L.L.C., 61799
PPL Electric Utilities Corp., 61799–61800
Reliant Energy Services, Inc., et al., 61800
Southern California Edison Co., 61800–61801
Texas Eastern Transmission, LP, 61801
Texas Gas Transmission, LLC, 61801
Transcontinental Gas Pipe Line Corp., 61802
Trans-Elect NTD Path 15, LLC, 61801–61802
Wyoming Interstate Co., Ltd., 61802–61803
Young Gas Storage Co., Ltd., 61803

Federal Maritime Commission
NOTICES
Agreements filed, etc., 61825–61826
Ocean transportation intermediary licenses:
Intercontinental Logistics, Inc., et al., 61826

Federal Motor Carrier Safety Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61877–61878

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 61826
Formations, acquisitions, and mergers, 61826
Permissible nonbanking activities, 61827
Meetings; Sunshine Act, 61827

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61881

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Gray wolf; northern Rocky Mountain distinct population segment, 61770–61775

Food and Drug Administration
RULES
Medical devices:
Immunology and microbiology devices—
Cystic fibrosis transmembrane conductance regulator gene mutation detection system, 61736–61738
NOTICES
Meetings:
Vaccines and Related Biological Products Advisory Committee, 61828–61829
Reports and guidance documents; availability, etc.:
Cystic fibrosis transmembrane conductance regulator gene mutation detection system; Class II special controls, 61829–61830
Potassium chloride modified-release tablets and capsules; in vivo bioequivalence and in vitro dissolution testing, 61830–61831

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California—
Citizen Watch Company of America, Inc.; watches warehousing, packaging, and distribution facility, 61786
Ohio, 61786–61787

Forest Service
NOTICES
Environmental statements; notice of intent:
Clearwater National Forest, ID, 61777–61778
Eldorado National Forest, CA, 61778–61781
Grand Mesa, Uncompahgre and Gunnison National Forest, CO, 61781–61783
Umatilla National Forest, WA, 61783–61784

Grain Inspection, Packers and Stockyards Administration
NOTICES
Meetings:
Grain Inspection Advisory Committee, 61784–61785

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
RULES
Supplemental standards of ethical conduct and financial disclosure requirements for department employees; correction, 61713
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61827–61828

Homeland Security Department
See Coast Guard
See Transportation Security Administration
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61832–61833

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Fresh garlic from—
China, 61787–61788
Tapered roller bearings and parts thereof, finished or unfinished from—
China, 61788
Countervailing duties:
Pasta from—
Italy, 61788–61789

International Trade Commission
NOTICES
Import investigations:
Circular welded non-alloy steel pipe from—
China, 61840–61841
Laser bar code scanners and scan engines, components, and products containing same, 61841–61842

Justice Department
NOTICES
Pollution control; consent judgments:
ARCO Terminal Services Corp., 61842
Hawaii Department of Transportation, 61842
Kerr-McGee Corp., et al., 61842–61843

Labor Department
See Mine Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61843–61844

Land Management Bureau
NOTICES
Closure of public lands:
Oregon, 61833
Committees; establishment, renewal, termination, etc.:
McInnis Canyons National Conservation Area Advisory Council, 61833
Pinedale Anticline Working Group, 61833–61834
Meetings:
National Historic Oregon Trail Interpretive Center Advisory Board, 61834
Public land orders:
Wisconsin, 61834–61835

Merit Systems Protection Board
PROPOSED RULES
Practice and procedure:
Constructive removal complaints; filing by administrative law judges, 61750
NOTICES
Opportunity to file amicus briefs:
Wilcox, William A., v. International Boundary and Water Commission, 61845–61846

Mine Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61844–61845

National Credit Union Administration
RULES
Credit unions:
Federal credit unions; fidelity bond and insurance coverage, 61713–61716

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleution Islands groundfish, 61775–61776
NOTICES
Coastal zone management programs and estuarine sanctuaries:
Consistency appeals—
Puerto Rico Highway and Transportation Authority, 61789–61790
Meetings:
North Pacific Fishery Management Council, 61790–61791

National Park Service
NOTICES
Native American human remains, funerary objects; inventory, repatriation, etc.:
American Museum of Natural History, New York, NY, 61835–61837
Forest Service, Gila National Forest, NM and Field Museum of Natural History, Chicago, IL, 61837–61838
Oregon State University, Corvallis, OR, 61838–61840

Nuclear Regulatory Commission
NOTICES
Regulatory guides; issuance, availability, and withdrawal, 61847–61848
Reports and guidance documents; availability, etc.:
License renewal guidance documents; technical bases for revision, 61848
Applications, hearings, determinations, etc.:
University of Virginia, Charlottesville, VA, 61846–61847

Pipeline and Hazardous Materials Safety Administration
PROPOSED RULES
Hazardous materials:
Aluminum cylinders manufactured of 6351-T6 aluminum alloy used in SCUBA, SCBA, carbon dioxide, and oxygen service; requalification and use criteria, 61762–61769

Postal Rate Commission
NOTICES
Domestic rates, fees, and mail classifications:
Parcel return service; status and classification changes, 61848–61850

Public Debt Bureau
See Fiscal Service

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Ameritas Variable Life Insurance Co. et al, 61850–61854
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 61854
Boston Stock Exchange, Inc., 61854–61857
Chicago Board Options Exchange, Inc., 61857–61859
Fixed Income Clearing Corp., 61859–61861
National Association of Securities Dealers, Inc., 61861–61866
New York Stock Exchange, Inc., 61866–61875

State Department
NOTICES
Clean Diamond Trade Act; participating countries eligible for trade in rough diamonds; list, 61875–61876
Meetings:
International Telecommunication Advisory Committee, 61876

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, control, etc.:
CSX Transportation, Inc., 61878–61879
Kansas City Southern Railway Co., 61879
Watco Companies, Inc., 61879–61880

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board

Transportation Security Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61831

Treasury Department
See Comptroller of the Currency
See Fiscal Service
See United States Mint
NOTICES
Meetings:
Federal Tax Reform, President's Advisory Panel, 61880

U.S. Citizenship and Immigration Services
NOTICES
Immigration:
Benefit application fee schedule adjustment; correction, 61831–61832

United States Mint
NOTICES
Meetings:
Citizens Coinage Advisory Committee, 61881–61882

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
5502 61713
Proposed Rules:
1201 61750

12 CFR
713 61713
741 61713

14 CFR
39 (6 documents) 61716, 61720, 61721, 61723, 61727, 61729
71 (4 documents) 61733, 61735, 61883

21 CFR
886 61736

33 CFR
117 61738
165 61739

40 CFR
52 61741
Proposed Rules:
52 61750

47 CFR
2 (2 documents) 61742, 61747
64 61747
73 (3 documents) 61748, 61749
Proposed Rules:
2 61752

49 CFR
Proposed Rules:
173 61762
180 61762

50 CFR
Proposed Rules:
17 61770
679 61775

Rules and Regulations

Federal Register
Vol. 70, No. 206
Wednesday, October 26, 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 HEALTH AND HUMAN SERVICES

5 CFR Part 5502

RIN 3209–AA15

Supplemental Financial Disclosure Requirements for Employees of the Department of Health and Human Services; Corrections

AGENCY: Department of Health and Human Services (HHS).

ACTION: Correcting amendments.

SUMMARY: The Department of Health and Human Services published a final rule in the **Federal Register** on Wednesday, August 31, 2005 (70 FR 51559), establishing supplemental financial disclosure reporting requirements for certain employees of the Food and Drug Administration (FDA) and the National Institutes of Health (NIH). That document contained language that incorrectly rendered the supplemental reporting requirements inapplicable to new entrant employees who file either a public or confidential financial disclosure report. This document corrects the final regulation by revising the appropriate sections.

DATES: This correction is effective October 26, 2005.

FOR FURTHER INFORMATION CONTACT: Edgar M. Swindell, Associate General Counsel, Office of the General Counsel, Ethics Division, Department of Health and Human Services, telephone (202) 690–7258, fax (202) 205–9752.

SUPPLEMENTARY INFORMATION: This document corrects two errors in the final rule which HHS published, with the concurrence of the Office of Government Ethics (OGE), on August 31, 2005, at 70 FR 51559. The corrections involve the supplemental financial disclosure reporting requirements for employees of the Food and Drug Administration and the National Institutes of Health contained respectively in 5 CFR 5502.106 and 5502.107. These sections require certain FDA and NIH employees to report financial interests in organizations affected by the programs and operations of their respective agencies. In the final rule, the text of each section erroneously carried forward an exception that had appeared in the interim final rule published on February 3, 2005, at 70 FR 5543. In the interim final rule, new entrant employees to positions classified as public or confidential filers were excepted from the supplemental reporting requirement because the disclosure of financial interests in significantly regulated organizations (SROs) for FDA or substantially affected organizations (SAOs) for NIH would duplicate the data submitted on an SF 278 or OGE 450 report. However, the final rule provided that the value of the reported interests must be disclosed. Because the SF 278 requires a reporting of value only within certain categories of amount and an OGE 450 requires no report of value whatsoever, these forms do not provide the information required by the final rule. As a result, the exception for new entrant employees was retained inadvertently. Accordingly, § 5502.106(c)(1) is corrected to delete the phrase ''other than a public filer or a confidential filer;'' and § 5502.107(c)(1) is corrected to state affirmatively that new entrant public or confidential filers are subject to the reporting requirement.

List of Subjects

5 CFR Part 5502

Conflict of interests, Ethics, Government employees, Outside activities, Reporting and record keeping requirements.

Dated: October 17, 2005.

Edgar M. Swindell,

Designated Agency Ethics Official, Department of Health and Human Services.

Dated: October 18, 2005.

Michael O. Leavitt,

Secretary, Department of Health and Human Services.

Approved: October 18, 2005.

Marilyn L. Glynn,

General Counsel, Office of Government Ethics.

■ For the reasons discussed in the preamble, the Department of Health and Human Services, with the concurrence of the Office of Government Ethics, corrects the HHS Supplemental Financial Disclosure Regulation at 5 CFR part 5502, by making the following correcting amendments:

PART 5502—SUPPLEMENTAL FINANCIAL DISCLOSURE REQUIREMENTS FOR EMPLOYEES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

■ 1. The authority citation for part 5502 continues to read as follows:

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2634.103.

§ 5502.106 [Amended]

■ 2. Amend § 5502.106 by removing from paragraph (c)(1) the commas and words ‘‘, other than a public filer or a confidential filer,’’.

§ 5502.107 [Amended]

■ 3. Amend § 5502.107 by removing from paragraph (c)(1) the commas and words ‘‘, other than a public filer or a confidential filer,’’ and adding in their place the words ‘‘who is a public filer or a confidential filer or’’.

[FR Doc. 05–21343 Filed 10–25–05; 8:45 am]

BILLING CODE 4150–03–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 713 and 741

Fidelity Bond and Insurance Coverage for Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its fidelity bond rule to increase the maximum allowable deductible, presently $200,000, and to change the minimum required coverage. NCUA is also removing its listing of approved bonds in the rule but will continue to list and update them on its Web site, and has concluded it will be useful to include in the rule some additional factors credit unions should consider in determining whether to raise their bond coverage above the regulatory requirements.

NCUA believes these changes modernize the rule and provide flexibility while addressing safety and soundness concerns. In response to public comment, NCUA has elected not to rescind its approval of Blanket Bond Standard Form 23. Finally, NCUA is making a technical correction in the regulation that requires fidelity bond coverage for federally insured, state chartered credit unions.

DATES: This rule is effective on November 25, 2005.

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

SUPPLEMENTARY INFORMATION:

Background

On May 19, 2005, the NCUA Board requested comment on a proposal to change part 713 of its regulations to provide for higher required fidelity bond coverages for credit unions and allow for higher deductibles. 70 FR 30017 (May 25, 2005). The amendments update the dollar amount thresholds in the rule, which were last amended over 20 years ago, and conform bond coverage to reflect risks in the current financial environment more accurately. The proposal also called for removing the listing in the rule of approved bond forms and carriers, as this information is available and updated on the NCUA Web site. The proposal invited comment on whether to rescind NCUA approval of Blanket Bond Standard Form 23 and on whether additional criteria ought to be included in the rule for consideration by credit unions in determining appropriate bond coverage amounts.

Summary of Comments

NCUA received twelve comments to the proposal. All the commenters supported increasing the maximum allowable deductible and the required coverage limits for both larger and small credit unions. Several noted these changes would provide needed flexibility for credit unions and would enable them to better manage risk.

Six commenters recommended that NCUA consider other additional risk factors besides eligibility under NCUA's Regulatory Flexibility (RegFlex) Program, 12 CFR part 742, in determining permissible deductible limits, and suggested factors such as capital ratios, earnings, net worth, risk profile, and loss history as appropriate limits. A few of these commenters suggested using the categories in NCUA's prompt corrective action rule as a basis for determining eligibility for higher deductibles, for example, permitting credit unions that are deemed ''well capitalized'' as eligible for higher deductibles. 12 CFR part 702. One commenter noted that asset size alone is not an indicator of risk and suggested that more focus on risk assessment, including the items described above, is appropriate for the coverage limit changes as well as for determining eligibility for the maximum deductible.

NCUA invited comment in the preamble to the proposed rule on whether to include additional risk factors in the rule for credit unions to consider in determining appropriate coverage limits. One commenter responded in the negative, while three others acknowledged additional risks. Of these, two expressed concern that listing additional risk factors in the rule should not result in a requirement that credit union management must necessarily consider those specific items. Rather, the commenters said, the rule should continue to allow for individual boards of directors to retain discretion to make determinations applicable to their unique circumstances.

Most commenters offered no view on whether NCUA should declare the standard bond form number 23 obsolete. Three commenters supported its removal from the approved listing of bond forms, but two opposed its removal. Of these, a trade association strongly urged NCUA to retain the standard form 23, indicating that its removal would restrict competition in the marketplace and adversely affect credit unions. This commenter noted that the form is likely to be updated in the near future.

One commenter noted support for removing the listing of approved bond forms and bond carriers from the regulation and including this information exclusively on the agency's Web site.

Final Rule

In view of the comments, NCUA is making the following changes to the version published as the proposed rule.

Eligibility for Increased Maximum Deductible

The proposal provided for raising the maximum deductible for credit unions with over a $1 million in assets from its current ceiling of $200,000, but restricting the eligibility for the higher deductible to credit unions that qualify under NCUA's RegFlex Program. 12 CFR part 742. The proposal invited comment about whether different criteria might present a more appropriate measure of eligibility for a higher deductible.

The Board has fully considered the comments it received and particularly those that suggested qualifying as ''well capitalized'' under the prompt corrective action rule presents a better measure on which to base eligibility for the higher deductible. 12 CFR part 702. While being ''well capitalized'' might indicate a credit union has an increased ability to absorb losses, the Board has determined that a purely quantitative factor such as a credit union's capital level ignores the fundamental premise that, in assessing risk, a more qualitative approach measuring the overall financial and operational health of a credit union is advisable. Call report data for June 2005 indicate there are almost 2,000 credit unions that, although ''well capitalized,'' were assigned a CAMEL 3 or 4 rating. For these reasons, the Board has determined to retain in the final rule that credit unions over $1 million in assets that qualify under the RegFlex Program may have higher deductibles based on the regulatory formula, up to a maximum permissible deductible of $1 million.

The Board, however, recognizes that eligibility for the RegFlex Program can fluctuate quarterly but does not believe that credit unions should have to review and, if necessary, adjust their bond coverage that frequently. For that reason, the Board has clarified in the final rule that a credit union must review its continued eligibility under the regulation for a higher deductible only once a year. A credit union's continued eligibility will be based on its asset size as reflected in its most recent, year-end 5300 call report and, for purposes of qualifying under the RegFlex program, its net worth as reflected in that same year-end 5300 call report. If a credit union previously qualified for the higher deductible has a decrease in assets based on its most recent year-end 5300 call report or its net worth has decreased so that it would no longer qualify for the RegFlex Program, then it must obtain the coverage otherwise required by the regulation. Nevertheless, even if a credit union has maintained assets in excess of $1 million and its net worth would otherwise continue to qualify it for the RegFlex Program, the credit union must obtain the required coverage if its most recent examination report disqualifies it from the RegFlex Program.

Coverage Limits

The Board outlined its reasons for increasing coverage limits for both larger and smaller credit unions in the preamble to the proposed rule, including inflation, changes in asset size, and the rate of growth in assets for

larger credit unions, which has approached 80% since 1999. With respect to smaller credit unions, the preamble discussed the increased risks faced in today's technological environment and their vulnerability to catastrophic loss engineered by one or a few dishonest insiders. No commenters questioned or disagreed with the Board's views on these matters. Accordingly, NCUA is adopting these aspects of the proposed amendments as a final rule without change.

Identification of Additional Risk Factors

The preamble to the proposed rule solicited comment from the public as to whether it would be useful to include additional risk factors in the rule that credit unions should consider in determining whether to obtain additional or enhanced coverage. Comment on this aspect of the proposal generally recognized that risks vary depending on a credit union's activities and various factors. The Board is aware that additional risk factors may exist, based on a credit union's fraud trends and loss experience, and the types of programs and activities in which it is engaged, such as wire transfer and remittance services. The Board believes it will be useful to amplify the considerations noted in the rule that credit unions should, but are not required, to consider. The Board notes that credit unions are not required by the rule to consider specific risk factors but credit unions should undertake their own internal risk assessment. The Board recognizes that each credit union board of directors should evaluate the unique aspects of its business model and associated risks and determine what additional coverages may be warranted.

Other Changes and Clarifications

The final rule eliminates the listing of approved bond carriers and forms, since this information is contained on the agency's Web site. One commenter noted that the proposed rule was potentially confusing in that it could be read to indicate all RegFlex credit unions, regardless of assets size, could have higher deductibles. The final rule has been revised to clarify that only credit unions that have $1 million or more in assets and are RegFlex eligible qualify for the higher deductibles. In addition, any changes to the deductible amount based on changes in asset size or RegFlex Program eligibility need only be made annually, within 30 days of the filing of the year-end call report. Finally, the Board has determined not to rescind its approval for standard bond form number 23 at this time, based on a comment submitted by the leading trade association for the surety industry indicating that the form is still viable.

The Board believes the changes in the rule are consistent with its ongoing efforts to reduce regulatory burden while preserving necessary requirements to assure credit union safety and soundness. As noted in the preamble to the proposed rule, the Board does not believe the increased coverage requirements will add significantly to premium costs and expects changes in the deductible ceiling will result in many credit unions being able to get fidelity bond coverage at lower cost.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The rule will require credit unions with assets under $4 million to obtain higher fidelity bond coverage than is currently required. The NCUA believes, based on discussions with members of the industry, that the increase in premium to obtain the higher coverage will be, relative to the premium already required, insignificant. The NCUA has determined and certifies that this rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, NCUA submitted a copy of its proposed rule to the Office of Management and Budget (OMB) at the time of its publication in the **Federal Register** and has applied for a control number. NCUA included in its proposed rule an analysis of the time and expense estimated to be required to comply with the notice provisions in the rule and solicited public comment on all aspects of the paperwork burden. NCUA received no comments on its estimate of the paperwork burden. OMB approved NCUA's submission and has assigned control number 3133–170 to this information collection.

Small Business Regulatory Enforcement Fairness Act

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

Executive Order 13132

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

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

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

List of Subjects in 12 CFR Parts 713 and 741

Credit unions, Insurance, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on October 20, 2005.

Mary F. Rupp,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR parts 713 and 741 as follows:

PART 713—FIDELITY BONDS AND INSURANCE COVERAGE FOR FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 713 continues to read as follows:

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

■ 2. Amend § 713.4 by revising paragraph (a) to read as follows:

§ 713.4 What bond forms may be used?

(a) A current listing of basic bond forms that may be used without prior NCUA Board approval is on NCUA's Web site, *http://www.ncua.gov.* If you are unable to access the NCUA Web site, you can get a current listing of approved bond forms by contacting NCUA's Public and Congressional Affairs Office, at (703) 518–6330.

* * * * *

■ 3. Amend § 713.5 by revising paragraphs (a) and (b) to read as follows:

§ 713.5 What is the required minimum dollar amount of coverage?

(a) The minimum required amount of fidelity bond coverage for any single loss is computed based on a federal credit union's total assets.

Assets	Minimum bond
$0 to $4,000,000	Lesser of total assets or $250,000.
$4,000,001 to $50,000,000	$100,000 plus $50,000 for each million or fraction thereof over $1,000,000.
$50,000,000 to $500,000,000	$2,550,000 plus $10,000 for each million or fraction thereof over $50,000,000, to a maximum of $5,000,000.
Over $500,000,000	One percent of assets, rounded to the nearest hundred million, to a maximum of $9,000,000.

(b) This is the minimum coverage required, but a federal credit union's board of directors should purchase additional or enhanced coverage when its circumstances warrant. In making this determination, a board of directors should consider its own internal risk assessment, its fraud trends and loss experience, and factors such as its cash on hand, cash in transit, and the nature and risks inherent in any expanded services it offers such as wire transfer and remittance services.

* * * * *

■ 4. Amend § 713.6 by revising paragraph (a)(1) and adding paragraph (c) to read as follows:

§ 713.6 What is the permissible deductible?

(a)(1)The maximum amount of allowable deductible is computed based on a federal credit union's asset size and capital level, as follows:

Assets	Maximum deductible
$0 to $100,000	No deductible allowed.
$100,001 to $250,000	$1,000.
$250,000 to $1,000,000	$2,000.
Over $1,000,000	$2,000 plus 1/1000 of total assets up to a maximum of $200,000; for credit unions over $1 million in assets that qualify for NCUA's Regulatory Flexibility Program in Part 742, the maximum deductible is $1,000,000.

* * * * *

(c) A credit union's eligibility to qualify for a deductible in excess of $200,000 is determined based on it having assets in excess of $1 million as reflected in its most recent year-end 5300 call report and, as of that same year-end, qualifying for NCUA's Regulatory Flexibility Program under part 742 of this title as determined by its most recent examination report. A credit union that previously qualified for a deductible in excess of $200,000, but that subsequently fails to qualify based on its most recent year-end 5300 call report because either its assets have decreased or it no longer meets the net worth requirements of part 742 of this title or fails to meet the CAMEL rating requirements of part 742 of this title as determined by its most recent examination report, must obtain the coverage otherwise required by paragraph (b) of this section within 30 days of filing its year-end call report and must notify the appropriate NCUA regional office in writing of its changed status and confirm that it has obtained the required coverage.

PART 741—REQUIREMENTS FOR INSURANCE

■ 1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781–1790, and 1790d.

■ 2. Amend § 741.201 by revising paragraph (b) to read as follows:

§ 741.201 Minimum fidelity bond requirements.

* * * * *

(b) Corporate credit unions must comply with § 704.18 of this chapter in lieu of part 713 of this chapter.

[FR Doc. 05–21326 Filed 10–25–05; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20473; Directorate Identifier 2004–NM–156–AD; Amendment 39–14351; AD 2005–22–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200PF, and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757–200, –200PF, and –300 series airplanes. This AD requires inspecting for damage of the ground brackets, ground wires, and terminal lugs of the auxiliary power unit (APU) battery and the APU start transformer rectifier unit (TRU) as applicable; and

corrective and related investigative actions. This AD results from reports indicating that during inspections on two airplanes, the ground brackets for the APU battery were found damaged. We are issuing this AD to detect and correct a damaged electrical bonding surface of the APU battery and APU start TRU ground connections, which could cause overheating of the ground connections and lead to possible consequent ignition of the adjacent insulating blankets.

DATES: This AD becomes effective November 30, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 30, 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: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6478; 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 certain Boeing Model 757–200, –200PF, and –300 series airplanes. That NPRM was published in the **Federal Register** on March 3, 2005 (70 FR 10344). That NPRM proposed to require inspecting for damage of the ground brackets, ground wires, and terminal lugs of the auxiliary power unit (APU) battery and the APU start transformer rectifier unit (TRU) as applicable; and corrective and related investigative actions.

Comments

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

Support for the Proposed Rule

Two commenters have reviewed the subject NPRM and concur with the content and 18 month compliance timetable of the proposed AD.

Request for Deferral of Corrective Actions

One commenter requests that we allow a deferral of 30 to 60 days, not to exceed the compliance time of 18 months from the issue date of the AD, to accomplish any required repair or replacement of damaged parts discovered during the required inspection. The commenter is concerned that additional time may be needed after the inspection to accomplish the corrective actions and states that the NPRM does not specify when the applicable corrective actions and related investigative actions should be accomplished, only that they must be accomplished within 18 months after the effective date of the AD.

We agree with the intent of the commenter's request. We have determined that, in this case, safety will not be compromised if the applicable corrective actions and related investigative actions are not accomplished immediately after the inspection, provided such actions are accomplished within the 18 month compliance time specified in paragraph (f) of the AD. It is not necessary to change the AD to meet the intent of the commenter's request.

Request to Cite Affected AD

Two commenters request that paragraph (b) of the NPRM be revised to refer to AD 97–15–09, amendment 39–10083 (July 17, 1997, 62 FR 38204), as an affected rule, and request that the proposed AD be revised to clarify how it is affected by AD 97–15–09 and FAA Alternate Means of Compliance (AMOC) 98–130S–149R1, dated August 6, 1998. One commenter believes that the proposed AD should supersede AD 97–15–09, which is applicable to all Model 757 airplanes.

We agree that AD 97–15–09 is related to this AD because AD 97–15–09 applies to the same APU battery and TRU ground assemblies as this AD, and because AD 97–15–09 is applicable to all Model 757 airplanes. However, we do not agree that this AD should supersede AD 97–15–09, because the failure conditions addressed by AD 97–15–09 are not the same as the failure condition addressed by this AD. For Model 757 airplanes having line number (L/N) 1 through 777 inclusive, the AMOC and terminating action for AD 97–15–09 are specified in Boeing Service Bulletin 757–24A0080, dated April 23, 1998—as well as Revision 1, dated May 20, 1999, Revision 2, dated March 29, 2001, or Revision 3, dated November 4, 2004—which specifies, among other things, replacing the ground brackets. Model 757 airplanes having L/N 778 and subsequent were in production when AD 97–15–09 was issued. The AMOC and terminating action for AD 97–15–09 resulted from design changes made during production of Model 757 airplanes having L/N 778 and subsequent, and those design changes were approved in FAA AMOC 98–130S–149R1, dated August 6, 1998. However, the production process used to clean the electrical bonding surfaces of the grounding bracket and frame of Model 757 airplanes having L/N 778 and subsequent was incorrect and did not reflect the actions specified in Service Bulletin 757–24A0080, resulting in overheating of the ground assemblies. This AD applies only to Model 757 airplanes having L/N 778 and subsequent; Model 757 airplanes having L/N 1 through 777 inclusive require no further action according to this AD, provided those airplanes are repetitively inspected per AD 97–15–09, or the terminating actions specified in Service Bulletin 757–24A0080 have been correctly incorporated. Therefore, although AD 97–15–09 is related to this AD, it is not affected by this AD. We have not changed this AD in this regard.

Request to Clarify Applicability of Proposed AD to Certain Service Information

One commenter requests that we clarify how the actions in the NPRM apply to the actions specified by Alert Service Bulletin 757–24A0080, which provides the terminating action for AD 97–15–09. The commenter states that accomplishing Alert Service Bulletin 757–24A0080 may result in the same unsafe condition that occurred in airplanes having L/N 778 and subsequent, that were modified in accordance with Boeing Production Revision Record (PRR) 54530–186. The commenter asserts that the AD should address this possibility.

We agree with the commenter's concern, since the unsafe condition that is the subject of this AD was detected on airplanes produced in accordance with PRR 54530–186. Certain production type design changes were the same (for airplanes having L/N 778 and subsequent) as those specified in Alert

Service Bulletin 757–24A0080—which provides the terminating action in AD 97–15–09 for airplanes L/N 1 through 777 inclusive. However, as already discussed, the unsafe condition addressed by this AD resulted from using an incorrect method to clean the bonding surfaces of the ground bracket and frame during the production of certain airplanes having L/N 778 and subsequent. The manufacturer advises that the bonding surface cleaning process specified in Alert Service Bulletin 757–24A0080 is the correct process. Therefore, no change is needed to the AD in this regard. Operators should note that the manufacturer has informed us that Model 757 airplanes having L/N 1029 and subsequent received the design change in production using the correct bonding surface cleaning process; therefore, only airplanes having L/N 778 through 1028 inclusive are affected by this AD.

Request to Include Electrical Check

One commenter requests that we revise the NPRM—as well as Figure 1 and the associated Work Instructions of Boeing Alert Service Bulletin 757–24A0099, dated March 25, 2004—to allow an initial detailed visual inspection (DVI) for discoloration and signs of overheating of the ground bracket and terminal, followed by a bonding resistance check between the ground bracket and terminal lug, rather than disconnecting the ground wire from the terminal bracket for the initial inspection. The commenter contends that, if the DVI discloses no evidence of discoloration or overheating, and the measured resistance does not exceed 0.0001 ohm, the ground connection is acceptable for service and further inspection or action is unnecessary and shouldn't be required for the ground components. Further, the commenter asserts that adding the DVI step will make the NPRM consistent with AD 97–15–09 and Alert Service Bulletin 757–24A0080.

We do not agree with this request. The unsafe condition results from the incorrect process used to clean the bonding surfaces of the ground bracket and wire terminal, which failed to remove an anodized finish that reduces conductivity from those ground components. We have determined that it may be possible for those anodized ground components to display no evidence of discoloration or overheating during a DVI and to pass the bonding resistance check, but to deteriorate with time and service, resulting in the unsafe condition this AD intends to correct. Therefore, the inspections and actions specified in the applicable service bulletins must be accomplished to correct the unsafe condition addressed by this AD, which, as discussed earlier, is not the same as the unsafe condition addressed by AD 97–15–09 and Alert Service Bulletin 757–24A0080. We have not changed the AD in this regard.

Request to Replace Reference to Standard Overhaul Practices Manual

The same commenter requests that we revise the service bulletins by replacing the references to the cleaning method of faying bonding surfaces specified in the Standard Overhaul Practices Manual (SOPM), section 20–11–03, with the method specified by the Standard Wiring Practices Manual (SWPM), section 20–20–00. The commenter provided no justification for this request.

We do not agree with this request. We have examined the specified methods and have determined that SOPM section 20–11–03 provides the correct method for cleaning faying surface bond. We have not changed the AD in this regard.

Request to Identify Service Bulletins in Costs of Compliance

One commenter requests that we revise the Costs of Compliance section of the NPRM to specify which airplane groups are affected by Boeing Alert Service Bulletin 757–24A0099, and which airplane groups are affected groups by Boeing Alert Service Bulletin 757–24A0100, both dated March 25, 2004. The commenter gave no justification for this request.

We partially agree with this request. Though costs are determined in part from the estimated number of work hours specified in the applicable service bulletins for each group of airplanes, specifying which service bulletin provided the information for which group(s) of airplanes would have no effect on the total costs of the AD. However, to minimize any possible confusion, we have revised the Costs of Compliance in the AD as requested.

Request to Revise Cost Estimate

One commenter requests that we revise the Cost of Compliance section of the NPRM to agree with the work hours specified by the service bulletins. The commenter states that the cost of the work hours estimated by the manufacturer is considerably higher than the cost specified in the NPRM. The commenter also requests that we include the costs for materials and parts needed to repair any damaged ground components. The commenter states that materials and parts form a significant part of the costs of any airplane modification.

We do not agree with this request. The economic analysis of an AD is limited to the cost of actions that are actually required by the AD. The economic analysis does not consider the costs of conditional actions, such as the work hours that might be needed to repair a broken ground bracket detected during a required inspection (''repair, if necessary''), or the costs for parts and materials needed to accomplish such a repair. Such conditional repairs would be required—whether or not the AD directs such repairs—to correct an unsafe condition discovered in an airplane and to ensure that the airplane is operated in an airworthy condition, as required by the Federal Aviation Regulations. No change is needed to the AD in this regard.

Request to Supply Torque Information

One commenter requests that we revise the NPRM, or the applicable service bulletin, to explicitly specify the torque required to tighten the screw/nut used to secure the ground wire terminal lug to the ground bracket. The commenter contends that SWPM section 20–30–00, which is specified as the source information for determining the applicable torque, lists a range of torque values for various stud sizes and states that the proper torque value is critical to the proper function of these components.

We agree that the correct torque is critical for proper accomplishment of this AD. Improper torque will affect the electrical conductivity of the ground terminals and could result in another unsafe condition. However, we do not agree that it is necessary for the AD to specify an exact torque value. Torque limits for specific stud sizes are specified in the SWPM, which is controlled and maintained by the manufacturer. We have not changed the AD in this regard.

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 251 airplanes of the affected design in the worldwide fleet. This AD will affect about 159 airplanes of U.S. registry.

For about 89 Group 1 airplanes as identified in Alert Service Bulletin 757–24A0099 and Alert Service Bulletin 757–24A0100, as applicable: The inspection and cleaning of the ground connections 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 $11,570, or $130 per airplane.

For about 64 Group 2 airplanes as identified in Alert Service Bulletin 757–24A0099: The inspection and cleaning of the ground connection will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $4,160, or $65 per airplane.

For about 6 Group 3 airplanes as identified in Alert Service Bulletin 757–24A0099: The inspection and cleaning of the ground connections 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 $780, or $130 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–22–07 Boeing: Amendment 39–14351. Docket No. FAA–2005–20473; Directorate Identifier 2004–NM–156–AD.

Effective Date

(a) This AD becomes effective November 30, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200PF, and –300 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 757–24A0099 and Boeing Alert Service Bulletin 757–24A0100, both dated March 25, 2004.

Unsafe Condition

(d) This AD was prompted by reports indicating that during inspections on two airplanes, the ground brackets for the auxiliary power unit (APU) battery were found damaged. We are issuing this AD to detect and correct a damaged electrical bonding surface of the APU battery and APU start transformer rectifier unit (TRU) ground connections, which could cause overheating of the ground connections and lead to possible consequent ignition of the adjacent insulating blankets.

Compliance

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

Inspection of Ground Connections

(f) Within 18 months after the effective date of this AD, perform a general visual inspection for damage of the ground brackets, ground wires, and terminal lugs of the APU battery and APU start TRU, and do any corrective and related investigative actions; by doing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 757–24A0099 (for Model 757–200 and –200PF series airplanes) or Boeing Alert Service Bulletin 757–24A0100 (for Model 757–300 series airplanes), both dated March 25, 2004, 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 normal available lighting conditions such as daylight, hangar lighting, flashlight or drop-light 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.''

Alternative Methods of Compliance (AMOCs)

(g)(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.

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin 757–24A0099, dated March 25, 2004; or Boeing Alert Service Bulletin 757–24A0100, dated March 25, 2004; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact 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 October 18, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–21311 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22170; Directorate Identifier 2005–NM–073–AD; Amendment 39–14349; AD 2005–22–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, –212, and –231 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A320–111, –211, –212, and –231 airplanes. This AD requires, for certain airplanes, modifying the cables and access holes to the inner tank fuel pumps; and, for certain other airplanes, inspecting the fuel pump access holes and modifying the access holes, if necessary. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent chafing of the fuel pump cables, which could result in electrical arcing and possible ignition of fuel vapors and consequent explosion of the fuel tank.

DATES: This AD becomes effective November 30, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 30, 2005.

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

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A320–111, –211, –212, and –231 airplanes. That NPRM was published in the **Federal Register** on August 23, 2005 (70 FR 49213). That NPRM proposed to require, for certain airplanes, modifying the cables and access holes to the inner tank fuel pumps; and, for certain other airplanes, inspecting the fuel pump access holes and modifying the access holes, if necessary.

Comments

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

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.

Editorial Change

As stated in the ''Relevant Service Information'' section of the NPRM, Airbus Service Bulletin A320–28–1054, dated August 23, 1993, describes procedures for performing an inspection, and ''as applicable, modifying the fuel pump access holes.'' We have revised paragraph (f)(2) of the final rule to state ''* * * modify the access holes, as applicable * * *'' instead of ''* * * modify the access holes, as necessary * * *.''

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD 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 17 airplanes of U.S. registry. The actions will be performed at an average labor rate of $65 per work hour, and any needed parts will be supplied from operator inventory.

For about 7 U.S.-registered airplanes subject to Airbus Service Bulletin A320–28–1008, Revision 1, dated April 10, 1989, the modification will take about 3 work hours. Based on these figures, the estimated cost of this modification for U.S. operators is $1,365, or $195 per airplane.

For about 10 U.S.-registered airplanes subject to Airbus Service Bulletin A320–28–1054, dated August 23, 1993, the inspection will take about 1 work hour. Based on these figures, the estimated cost of this inspection for U.S. operators is $650, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–22–05 Airbus: Amendment 39–14349. Docket No. FAA–2005–22170; Directorate Identifier 2005–NM–073–AD.

Effective Date

(a) This AD becomes effective November 30, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A320–111, –211, –212, and –231 airplanes, certificated in any category, that have not received Airbus Modification 21088 or 21999 in production; and airplanes that have received Airbus Modification 21088 in production and have manufacturer's serial numbers 91 to 113 inclusive and 140 to 189 inclusive.

Unsafe Condition

(d) This AD results from fuel systems reviews conducted by the manufacturer. We are issuing this AD to prevent chafing of the fuel pump cables, which could result in electrical arcing and possible ignition of fuel vapors and consequent explosion of the fuel tank.

Compliance

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

Inspection and Modification of Fuel Pump Access Holes

(f) Within 58 months after the effective date of this AD, perform the actions required by paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For airplanes that have not received Airbus Modification 21088 or 21999 in production: Modify the cables and access holes to the inner tank fuel pumps, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1008, Revision 1, dated April 10, 1989.

(2) For airplanes that have received Airbus Modification 21088 in production and have manufacturer's serial numbers 91 to 113 inclusive and 140 to 189 inclusive: Perform a general visual inspection for the correct radius of the fuel pump access holes and modify the access holes, as applicable, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1054, dated August 23, 1993. Do any applicable repairs before further flight.

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

No Reporting Requirement

(g) Although Airbus Service Bulletin A320–28–1054, dated August 23, 1993, describes procedures for reporting inspection findings to Airbus, this AD does not require that report.

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–2005–031, dated February 16, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use the service information identified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. Airbus Service Bulletin A320–28–1008, Revision 1, dated April 10, 1989, contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2, 7–9	1	April 10, 1989.
3–6	Original	February 9, 1989.

The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Airbus service bulletin	Revision level	Date
A320–28–1008.	1	April 10, 1989.
A320–28–1054.	Original	August 23, 1993.

Issued in Renton, Washington, on October 18, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–21312 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22757; Directorate Identifier 2005–SW–32–AD; Amendment 39–14345; AD 2005–22–01]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76A, B, and C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the Sikorsky Aircraft Corporation (Sikorsky) Model S–76A, B, and C helicopters. This action requires certain inspections of the main rotor lower bifilar arm assembly in the attachment area around the lower bifilar lugs for a crack. If a

crack is found on any bifilar lug, this AD requires replacing the bifilar arm assembly with an airworthy bifilar arm assembly. If no crack is found, this AD requires a one-time test for the required torque on the lug nuts and, if necessary, applying the required torque and conducting the torque stabilization tests. This amendment is prompted by four reports of cracked bifilars. The actions specified in this AD are intended to prevent failure of a bifilar lug, damage to the main rotor control system, and subsequent loss of control of the helicopter.

DATES: Effective November 10, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 10, 2005.

Comments for inclusion in the Rules Docket must be received on or before December 27, 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; or
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386–3001, fax (203) 386–5983.

Examining the Docket

You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://dms.dot.gov,* or in person at the Docket Management System (DMS) 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 the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: Tracy Murphy, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7172, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for Sikorsky Model S–76A, B, and C helicopters. This action requires certain inspections of the main rotor lower bifilar arm assembly around the lower bifilar lugs for a crack. If a crack is found on any bifilar lug, this AD requires replacing the bifilar arm assembly with an airworthy bifilar arm assembly. If no crack is found, this AD requires a one-time test for the required torque on the lug nuts and, if necessary, applying the required torque and conducting the torque stabilization tests. This amendment is prompted by four reports of cracked bifilars. The actions specified in this AD are intended to prevent failure of a bifilar lug, damage to the main rotor system, and subsequent loss of control of the helicopter.

Sikorsky issued Alert Service Bulletin No. 76–65–62, dated December 14, 2004 (ASB), after receiving two reports of cracks in the lug areas of helicopters. Sikorsky states that cracked lugs were found despite the lower support lug joining being torqued and stabilized. For a bifilar with more than 1500 hours, the ASB specifies performing, within 100 flight hours from the issue date of the ASB, a one-time inspection of the lower bifilar support lugs for cracks in the lug attachment areas. These are considered interim actions until terminating action can be taken. Sikorsky has designed and is currently testing a new main rotor hub pilot fitting (pilot fitting).

Since Sikorsky issued the ASB, the FAA has received two more reports for a total of four reports of cracked bifilars. The additional reports indicate that cracks have become more severe. Therefore, this AD will require a repeat inspection of the arm assembly in addition to the inspections in the ASB. Also, this AD is effective for helicopters with a pilot fitting, part number (P/N) 76103–08003–101, which is different from what the ASB specifies. Investigation has shown the root cause of the failure is not the bifilar itself but the mating part that attaches the bifilar to the main rotor hub, called the pilot fitting. This fitting is transferring the load too abruptly into the bifilar. The ongoing fatigue testing is with the production bifilar and the redesigned pilot fitting. If the tests are successful, terminating action likely will include installing the new pilot fitting. The frequency of reports and the severity of the failures prompted this AD. In the most recent report, six of the six lugs had separated from the bifilar.

This unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, this AD is being issued to prevent failure of a bifilar lug, damage to the main rotor system, and subsequent loss of control of the helicopter. This AD requires the following for helicopters with a pilot fitting, part number (P/N) 76103–08003–101, with 1500 or more hours time-in-service (TIS):

- Within 50 hours TIS, unless accomplished previously, and thereafter at intervals not to exceed 50 hours TIS, inspect the bifilar arm assembly for a crack in the lug attachment area.
- If you find a crack on any bifilar arm assembly lug, before further flight, replace the bifilar arm assembly with an airworthy bifilar arm assembly.
- If no crack is found at the initial inspection, perform a one-time torque test. The torque test is not required at the recurring inspection intervals of the bifilar arm assembly.

Accomplish the actions by following the specified portions of the ASB described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. This AD requires the affected helicopters to be inspected and undergo a torque test within 50 hours TIS. If you find a crack in the bifilar lug attachment area, this AD requires replacing any unairworthy bifilar arm assembly with an airworthy bifilar arm assembly before further flight. Therefore, this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will:

- Affect 216 helicopters,
- Take about 4 work hours for each inspection (including the torque stabilization tests), assuming 6 inspections per year, and 4 hours to replace the bifilars, assuming a total of 2 bifilar arm assemblies need replacing, and
- Cost about $19,727 for a bifilar arm assembly.

Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $376,934.

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 written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–22757; Directorate Identifier 2005–SW–32–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. 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.*

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 an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2005–22–01 Sikorsky Aircraft Corporation: Amendment 39–14345. Docket No. FAA–2005–22757; Directorate Identifier 2005–SW–32–AD.

Applicability: Model S–76A, B, and C, with a main rotor hub pilot fitting (pilot fitting), part number (P/N) 76103–08003–101, with 1500 or more hours time-in-service (TIS), installed, certificated in any category.

Compliance: Required as indicated.

To prevent failure of a bifilar lug, damage to the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours TIS, and thereafter at intervals not to exceed 50 hours TIS, inspect the lower bifilar arm assembly for a crack in the lug attachment area. Conduct the inspection of the lower bifilar arm assembly by following the Accomplishment Instructions, paragraph 3.A.(1) through 3.A.(6), of Sikorsky Alert Service Bulletin No. 76–65–62, dated December 14, 2004 (ASB).

(1) If you find a crack on any bifilar arm assembly lug, before further flight, replace the bifilar arm assembly with an airworthy bifilar arm assembly.

(2) If no crack is found at the initial inspection, perform a one-time torque test. Perform the torque test and the additional torque procedures as stated in the Accomplishment Instructions, paragraph 3.B.(1) through 3.B.(3) of the ASB. The torque test is not required at the recurring inspection intervals of the lower bifilar arm assembly.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Boston Aircraft Certification Office, FAA, for information about previously approved alternative methods of compliance.

(c) Inspect the lower bifilar arm assembly and perform the torque test by following the specified portions of Sikorsky Alert Service Bulletin No. 76–65–62, dated December 14, 2004. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386–3001, fax (203) 386–5983. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(d) This amendment becomes effective on November 10, 2005.

Issued in Fort Worth, Texas, on October 17, 2005.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–21256 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22018; Directorate Identifier 2005–CE–41–AD; Amendment 39–14348; AD 2005–22–04]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires you to determine (maintenance records check and/or inspection) whether certain nose landing gear (NLG), main landing gear (MLG), and MLG shock absorber assemblies with a serial number beginning with ''AM'' are

installed, and, if installed, would require you to replace them with ones without the ''AM.'' This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this AD to detect and correct the NLG, MLG, and MLG shock absorber assemblies that are affected by hydrogen embrittlement, which could result in failure of the landing gear. This failure could lead to nose or main landing gear collapse during operation with consequent loss of airplane control.

DATES: This AD becomes effective on December 12, 2005.

As of December 12, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilatus-aircraft.com* or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2005–22018; Directorate Identifier 2005–CE–41–AD.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that some components of the main landing gear (MLG), nose landing gear (NLG), and MLG shock absorber assemblies have the potential to fail during operation.

Investigations revealed that an improper cadmium plating process applied to the high strength steel part causes the problem. This can result in hydrogen embrittlement. Affected are only components that are installed on MLG, NLG, and MLG shock absorber assemblies, with serial numbers that start with the letters ''AM.'' Components in this condition can experience a decreased fatigue life.

What is the potential impact if FAA took no action? Failure of the nose or main landing gear could lead to nose or main landing gear collapse during operation with consequent loss of airplane control.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 22, 2005 (70 FR 48914). The NPRM proposed to require you to determine (maintenance records check and/or inspection) whether certain nose landing gear (NLG), main landing gear (MLG), and MLG shock absorber assemblies with a serial number beginning with ''AM'' are installed, and, if installed, would require you to replace them with ones without the ''AM.''

Comments

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

Conclusion

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

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

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

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 350 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to do the check of the logbook to identify NLG, MLG, and MLG shock absorber assemblies with serial numbers that start with the letters AM:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $65 per hour = $65	Not applicable	$65	350 × $65 = $22,750.

We estimate the following costs to do any necessary inspection and replacement of all possible NLG, MLG, and MLG shock absorber assemblies that would be required based on the results of this check of the logbook. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
41 work hours × $65 per hour = $2,665	$3,800 for the NLG kit, $850 for the MLG kit, and $2,600 for the MLG shock absorber assembly kit.	$2,665 + $3,800 + $850 + $2,600 = $9,915.

Pilatus will provide warranty credit for replacing the specified assemblies to the extent stated in the service information.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–22018; Directorate Identifier 2005–CE–41–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–22–04 Pilatus Aircraft Ltd.: Amendment 39–14348; Docket No. FAA–2005–22018; Directorate Identifier 2005–CE–41–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on December 12, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers (MSN) 101 through MSN 625, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified in this AD are intended to detect and correct the nose landing gear (NLG), main landing gear (MLG), and MLG shock absorber assemblies that are affected by hydrogen embrittlement, which could result in failure of the landing gear. This failure could lead to nose or main landing gear collapse during operation with consequent loss of airplane control.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Maintenance Records Check:	Within the next 100 hours time-in-service (TIS) or 12 calendar months after December 12, 2005 (the effective date of this AD), whichever occurs first, unless already done..	No special procedures necessary to check the maintenance records.
(i) *For MSN 101 through MSN 471 and MSN 473 through MSN 482:* Check the maintenance records to determine whether the following replacements have been made:		
(A) Nose landing gear (NLG) assemblies, part number (P/N) 532.20.12.038 and P/N 532.20.12.039 with serial numbers (S/N) AM 001 through AM 045 and AM 048 through AM 054;		
(B) Main landing gear (MLG) assemblies, P/N 532.10.12.049 and P/N 532.10.12.050 with S/N AM 001 through AM 027, AM 029 through AM 045, AM 047 through AM 050, AM 052, and AM 053; and		
(C) MLG shock absorber assemblies, P/N 532.10.12.175, with S/N AM 001 through AM 017, AM 019, AM 021 through AM 063, AM 065 through AM 070, AM 072 through AM 074, AM 080, AM 084, AM 086, AM 089, AM 090, AM 093 through AM 096, AM 099, AM 103 through AM 107.	.....	
(ii) *For MSN 472 and MSN 483 through MSN 625:* Verify that the S/N parts identified in paragraphs (e)(1)(i)(A), (e)(1)(i)(B), and (e)(1)(i)(C) of this AD have not been installed.	.....	
(iii) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may make this check. You must make an entry into the aircraft records that shows compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	.....	

Actions	Compliance	Procedures
(2) If you find as a result of the check required by paragraph (e)(1)(i) of this AD that there is no record of the specified assembly replacement, or as a result of the check required by paragraph (e)(1)(ii) of this AD that parts have been installed in service, then inspect: (i) The NLG assemblies, P/N 532.20.12.038 and P/N 532.20.12.039, for any S/N that starts with AM 001 through AM 045 and AM 048 through AM 054. (ii) The MLG assemblies, P/N 532.10.12.049 and P/N 532.10.12.050, for any S/N that starts with AM 001 through AM 027, AM 029 through AM 045, AM 047 through AM 050, AM 052, and AM 053. (iii) The MLG shock absorber assemblies, P/N 532.10.12.175, for any S/N that starts with AM 001 through AM 017, AM 019, AM 021 through AM 063, AM 065 through AM 070, AM 072 through AM 074, AM 080, AM 084, AM 086, AM 089, AM 090, AM 093 through AM 096, AM 099, and AM 103 through AM 107. (iv) You may choose to do the inspection without doing the maintenance records check.	Within the next 100 hours time-in-service (TIS) or 12 calendar months after December 12, 2005 (the effective date of this AD), whichever occurs first, unless already done..	Follow Pilatus PC12 Service Bulletin No. 32–016, dated March 11, 2004.
(3) If during the inspection required by paragraph (e)(2) of this AD, you find: (i) Any NLG assembly, P/N 532.20.12.038 and P/N 532.20.12.039, with any S/N that starts with AM 001 through AM 045 or AM 048 through AM 054, replace the NLG specific components with new components. (ii) Any MLG assembly, P/N 532.10.12.049 and P/N 532.10.12.050, with any S/N that starts with AM 001 through AM 027, AM 029 through AM 045, AM 047 through AM 050, AM 052, or AM 053, replace the MLG specific components with new components. (iii) Any MLG shock absorber assembly, P/N 532.10.12.175, with any S/N that starts with AM 001 through AM 017, AM 019, AM 021 through AM 063, AM 065 through AM 070, AM 072 through AM 074, AM 080, AM 084, AM 086, AM 089, AM 090, AM 093 through AM 096, AM 099, or AM 103 through AM 107, replace the MLG shock absorber specific components with new components.	Before further flight after the inspection required by paragraph (e)(2) of this AD.	Follow Pilatus PC12 Service Bulletin No. 32–016, dated March 11, 2004.
(4) Do not install: (i) Any NLG assembly, P/N 532.20.12.038 and P/N 532.20.12.039, with any S/N that starts with AM 001 through AM 045 or AM 048 effective through AM 054. (ii) Any MLG assembly, P/N 532.10.12.049 and P/N 532.10.12.050, with any S/N that starts with AM 001 through AM 027, AM 029 through AM 045, AM 047 through AM 050, AM 052, or AM 053. (iii) Any MLG shock absorber assembly, P/N 532.10.12.175, with any S/N that starts with AM 001 through AM 017, AM 019, AM 021 through AM 063, AM 065 through AM 070, AM 072 through AM 074, AM 080, AM 084, AM 086, AM 089, AM 090, AM 093 through AM 096, AM 099, or AM 103 through AM 107.	As of December 12, 2005 (the effective date of this AD)	Not Applicable.

Note 1: AD 2002–14–22, issued on July 8, 2002 (67 FR 46582), and AD 2004–06–05, issued on March 15, 2004 (69 FR 13712), are still applicable.

Note 2: The FAA recommends that you send any removed parts or assemblies to Pilatus.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) Swiss AD Number HB–2005–168, dated May 3, 2005, also addresses the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in Pilatus PC12 Service Bulletin No. 32–016, dated March 11, 2004. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: SupportPC12@pilatus-aircraft.com or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–22018; Directorate Identifier 2005–CE–41–AD.

Issued in Kansas City, Missouri, on October 19, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–21255 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20692; Directorate Identifier 2004–NM–229–AD; Amendment 39–14350; AD 2005–22–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP 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 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. This AD requires doing a one-time high-frequency eddy current inspection and repetitive detailed inspections for cracks in the frame web of main entry door number 1; and repairing the door frame web if necessary. This AD also provides for optional terminating action for the repetitive inspections. This AD is prompted by reports of cracking at the upper aft corner of the cutout for main entry door number 1 in the station 488 frame web. We are issuing this AD to detect and correct cracks in the frame web. These cracks could cause the frame to break and lead to rapid decompression of the airplane.

DATES: This AD becomes effective November 30, 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 30, 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–2005–20692; the directorate identifier for this docket is 2004–NM–229–AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. That action, published in the **Federal Register** on March 23, 2005 (70 FR 14589), proposed to require doing a one-time high-frequency eddy current inspection and repetitive detailed inspections for cracks in the frame web of main entry door number 1; and repairing the door frame web if necessary. That action also proposed to provide for 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 submitted on the proposed AD.

Request To Include Optional Inspection

One commenter requests that we include an option for Group 3 airplanes in paragraph (f) of the proposed AD to perform an open-hole high-frequency eddy current (HFEC) inspection every 3,000 flight cycles instead of a detailed inspection every 1,500 flight cycles. The commenter states that the manufacturer has found this optional inspection to be structurally acceptable.

We agree with the commenter that performing an HFEC inspection every 3,000 flight cycles would provide an equivalent level of safety as intended by this AD. However, the repetitive detailed inspection requirement is actually specified in paragraph (g) of the proposed AD, not paragraph (f). Therefore, we have revised paragraph (g) of the final rule, for Group 3 airplanes only, to include an option to perform a surface HFEC inspection of the frame web between the upper door sill and door stop number 8 for cracks every 3,000 flight cycles in accordance with the method referenced in Figure 3 or Figure 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin (ASB) 747–53A2508, dated August 19, 2004.

Request To Revise Frame Inner Chord Inspection Requirement

One commenter requests that we delete paragraph (j) of the proposed AD or revise it to state that when the frame inner chord is being replaced concurrently with the required frame web repairs, the open-hole HFEC inspection of the frame inner chord is not required. The commenter states that the intent of paragraph (j) should be that when the frame inner chord is being replaced, there is no need to inspect the existing fastener holes in the chord because the chord is a new part. The commenter refers to the applicable Boeing Structural Repair Manual (SRM) and Boeing ASB 747–53A2508 to support this contention.

We agree with this request. Open-hole HFEC inspection of the frame inner chord is a conditional inspection included in the repair procedures specified in paragraph (h) of this AD. However, AD 91–11–01, amendment 39–6997 (dated May 15, 1991), referenced in paragraph (j) of the proposed AD, only requires inspecting the frame inner chord, while AD 90–06–06, amendment 39–6490 (dated March 7, 1990), actually requires replacing the frame inner chord. Therefore, we have concluded that paragraph (j) of the proposed AD should have referred to AD 90–06–06, rather than AD 91–11–01, regarding concurrent replacement of the frame inner chord. We have revised paragraph (j) of the final rule to reflect the commenter's request and to correctly refer to AD 90–06–06. Further, to ensure that there is no confusion about the HFEC inspection, we also revised paragraph (h) of the final rule to include a reference to an ''open-hole'' HFEC inspection.

Request To Clarify Use of Structural Repair Manual

The same commenter requests that paragraph (h) of the proposed AD be clarified. The commenter asserts that paragraph (h) should be revised to state that the Boeing SRM meets the intent of the proposed AD. Further, the commenter requests that we clarify the statement ''For a repair method to be approved, the approval must specifically reference this AD.'' The commenter feels that paragraph (h) as written might lead to confusion.

We agree with the commenter that the Boeing SRM procedures specified in the

service bulletin are appropriate sources of service information for the required repairs. We also agree with the commenter that the statement ''For a repair method to be approved, the approval must specifically reference this AD'' applies only when the service bulletin advises the operators to contact Boeing for repair procedures, because that statement relates only to damage that is not addressed by the SRM repair procedures. To make it clear that any repair that is done in accordance with the SRM requires no further FAA approval, we have added Note 1 after paragraph (h) of the final rule, which states that the service bulletin ''references the Boeing structural repair manual as an additional source of service information to comply with the intent of paragraph (h) this AD.''

Related Rulemaking

We have determined that certain detailed inspections required by paragraph (f) of AD 2005–20–30, amendment 39–14327 (70 FR 59252, October 12, 2005), or paragraph (f) of AD 2005–08–01, amendment 39–14053 (70 FR 18290, April 11, 2005), are considered acceptable for accomplishing the repetitive detailed inspections required for Group 1 and Group 2 airplanes by paragraph (g)(1) of this AD or for Group 3 airplanes by paragraph (g)(2)(i) of this AD. Therefore, to give credit for accomplishing the corresponding actions described in AD 2005–20–30 and AD 2005–08–01, we have retitled and reidentified paragraph (j) as paragraph (j)(1), and inserted new paragraph (j)(2) in the final rule.

Explanation of Editorial Corrections to Proposed AD

We have made certain minor changes to punctuation, spelling and other mechanical elements of the proposed AD. These changes do not affect the technical content of the final rule.

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.

Explanation of Change 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.

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

There are about 274 airplanes of the affected design in the worldwide fleet. This AD will affect about 140 airplanes of U.S. registry. The following table, using an estimated labor rate of $65 per work hour, provides the estimated costs for U.S. operators to comply with this AD.

Airplanes	Number of airplanes	Work hours	Cost per airplane	Fleet cost
Group 1 (left and right side HFEC inspection)	119	2	$130	$15,470.
Group 1 (left and right side detailed inspection)	119	2	130, per inspection cycle	15,470, per inspection cycle.
Group 2 (left side HFEC inspection)	16	1	65	1,040.
Group 2 (left side detailed inspection)	16	1	65, per inspection cycle	1,040, per inspection cycle.
Group 3 (left and right side HFEC inspection)	5	2	130	650.
Group 3 (left and right side detailed inspection)	5	2	130, per inspection cycle	650, 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):

2005–22–06 Boeing: Amendment 39–14350. Docket No. FAA–2005–20692; Directorate Identifier 2004–NM–229–AD.

Effective Date

(a) This AD becomes effective November 30, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2508, dated August 19, 2004.

Unsafe Condition

(d) This AD was prompted by reports of cracking at the upper aft corner of the cutout for main entry door number 1 in the station 488 frame web. We are issuing this AD to detect and correct cracks in the frame web. These cracks could cause the frame to break and lead to 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.

Initial Inspections

(f) Before the accumulation of 16,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, do a high frequency eddy current (HFEC) inspection and a detailed inspection of the station 488 frame web, by doing all of the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin (ASB) 747–53A2508, dated August 19, 2004; except as provided by paragraph (h) or (j) of this AD.

Repetitive Inspections

(g) If no crack is found during the inspections required by paragraph (f) of this AD, do the applicable actions specified in paragraph (g)(1) or (g)(2) of this AD.

(1) For airplanes identified in the service bulletin as Groups 1 and 2: Repeat the detailed inspection required by paragraph (f) of this AD at intervals not to exceed 3,000 flight cycles.

(2) For airplanes identified in the service bulletin as Group 3, do the actions specified in either paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) Repeat the detailed inspection required by paragraph (f) of this AD thereafter at intervals not to exceed 1,500 flight cycles.

(ii) Within 1,500 flight cycles after the inspections required by paragraph (f) of this AD, perform a HFEC inspection for cracks of the frame web between the upper door sill and door stop number 8 in accordance with the method referenced in Figure 3 or Figure 4 of the Accomplishment Instructions of the service bulletin. Repeat the HFEC inspection thereafter at intervals not to exceed 3,000 flight cycles.

Repairs

(h) If any crack in the main entry door frame web is found during any inspection required by this AD: Before further flight, perform repairs—including an open-hole HFEC inspection of the frame inner chord—in accordance with the Accomplishment Instructions of Boeing ASB 747–53A2508, dated August 19, 2004. Where the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair the door frame web and any frame chord damage using a method approved in accordance with paragraph (k) of this AD.

Note 1: Boeing ASB 747–53A2508, dated August 19, 2004, references the Boeing Structural Repair Manual as an additional source of service information to comply with the intent of paragraph (h) this AD.

Termination of Repeat Inspections

(i) For the repaired frame web only, accomplishing the door frame web repair required by paragraph (h) of this AD ends the repetitive inspections required by paragraph (g) of this AD.

Credit for Actions Accomplished Using Alternative ADs

(j)(1) If the frame inner chord replacement required by AD 90–06–06, amendment 39–6490, (which identifies Boeing Service Bulletin 747–53–2272, as listed in Boeing Document No. D6–35999, dated March 31, 1989, as a source of service information) is accomplished concurrently with the repair of the station 488 door frame web specified by paragraph (h) of this AD, the open-hole HFEC inspection required by paragraph (h) of this AD is not required for the new frame inner chord.

(2) Accomplishing the repetitive detailed inspections of the station 488 frame required by paragraph (f) of AD 2005–20–30, amendment 39–14327, or paragraph (f) of AD 2005–08–01, amendment 39–14053, satisfies the requirements for the corresponding repetitive detailed inspections described by paragraphs (g)(1) and (g)(2)(i) of this AD, provided those inspections are performed at intervals corresponding with the applicable intervals required by 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) 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 DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(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.

Material Incorporated by Reference

(1) You must use Boeing Alert Service Bulletin 747–53A2508, dated August 19, 2004, 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 October 18, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–21293 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18564; Directorate Identifier 2004–NM–16–AD; Amendment 39–14352; AD 2005–22–08]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP 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 EMBRAER airplane models as identified above. This AD requires modifying the total air temperature (TAT) sensor heating system. This AD also allows replacing the fully automated digital electronic control (FADEC) assemblies with new or modified assemblies as an additional means of compliance. This AD results from a report indicating that the FADEC unit failed to compensate for ice accretion on the engine fan blades due to a false temperature signal from the TAT sensor to the FADEC. We are issuing this AD to prevent failure of the TAT sensor, which could result in

insufficient thrust to take off or (if coupled with the loss of an engine during takeoff) to abort the takeoff in a safe manner, and consequent reduced controllability of the airplane.

DATES: This AD becomes effective November 30, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 30, 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That supplemental NPRM was published in the **Federal Register** on August 17, 2005 (70 FR 48339). That supplemental NPRM proposed to require modifying the total air temperature (TAT) sensor heating system. That supplemental NPRM also allows for replacing the fully automated digital electronic control (FADEC) unit assemblies with new or modified assemblies as an additional means of compliance.

New Relevant Service Information

EMBRAER has issued Service Bulletin 145–30–0028, Revision 10, dated March 22, 2005. Paragraph (f) of the supplemental NPRM refers to EMBRAER Service Bulletin 145–30–0028, Revision 09, dated March 1, 2004, as the appropriate source of service information for modifying the TAT sensor heating system. The applicability statement of the supplemental NPRM also refers to EMBRAER Service Bulletin 145–30–0028, Revision 09, as the source in which affected airplanes are identified. Revision 10 of the service bulletin includes minor editorial revisions, but no substantive changes. Therefore, we have revised the applicability statement and paragraph (f) of this AD to refer to EMBRAER Service Bulletin 145–30–0028, Revision 10. We have also revised paragraph (g) of this AD to give credit for modifications done before the effective date of this AD in accordance with Revision 09.

Comments

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

Support for the Supplemental NPRM

One commenter supports the intent of the supplemental NPRM.

Request To Add Additional Means of Compliance

The airplane manufacturer comments that it has recently approved FADEC software version 8.0. (Paragraph (h) of the supplemental NPRM specifies that replacing the existing FADEC assemblies with new or modified FADEC assemblies that include software version 7.6 is acceptable for compliance with paragraph (f) of the supplemental NPRM.) The commenter notes that, because the same features relating to temperature reading in FADEC software version 7.6 are included in software version 8.0, FADEC software version 8.0 should also be referenced as an acceptable means of compliance with the proposed requirements. The commenter also lists the service bulletins for installing FADEC software version 8.0.

We agree with the commenter's request. EMBRAER has issued the service bulletins specified in the table below.

Service Information for Installing FADEC Assemblies Having Software Version 8.0

For EMBRAER Model—	EMBRAER Service Bulletin	Revision	Date	Which refers to Rolls-Royce Service Bulletin—
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0027	Original	March 15, 2005	AE3007A–73–079.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0028	Original	March 15, 2005	AE3007A–73–078.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0029	Original	May 4, 2005	AE3007A–73–075.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0029	01	June 27, 2005	AE3007A–73–075.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0030	Original	May 5, 2005	AE3007A–73–076.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0031	Original	May 5, 2005	AE3007A–73–077.
EMB–135BJ	145LEG–73–0005	Original	June 7, 2005	AE3007A–73–079.
EMB–135BJ	145LEG–73–0006	Original	March 8, 2005	AE3007A–73–078.

These service bulletins describe procedures for replacing existing FADEC assemblies with FADEC assemblies that have software version 8.0, including verifying the part number of the ITT trim plug and replacing it with an ITT trim plug of another part number if necessary. These service bulletins also refer to the Rolls-Royce service bulletins listed in the table above as additional sources of service information for replacing the FADEC assemblies. The EMBRAER service bulletins listed in the table also specify that installing the new or modified

FADEC assemblies that have FADEC software version 8.0 also necessitates upgrading the engine indication and crew alerting system (EICAS), central maintenance computer (CMC), and IC–600 configuration modules, as applicable.

We have revised paragraph (h) and Table 2 of this AD to include references to these service bulletins and the applicable actions in them.

Request To Add Reference to Rolls-Royce Service Bulletins

One commenter requests that we revise Table 2 of the supplemental NPRM to give credit for replacing the FADEC assemblies with new or modified FADEC assemblies that include software version 7.6 in accordance with Rolls-Royce Service Bulletin AE3007A–73–067 or AE3007A–73–069, as applicable. The commenter states that adding these service bulletins to Table 2 would save it a lot of time that would otherwise be needed to request an Alternative Method of Compliance (AMOC) and would save the FAA time that would be needed to address those AMOCs.

We do not agree that any change to this AD is necessary to meet the intent of the commenter's request. Table 2 of this AD gives credit for replacing FADEC assemblies with new or modified FADEC assemblies that include software version 7.6 in accordance with, among other service bulletins, EMBRAER Service Bulletin 145–73–0022 or 145–73–0024, both Revision 01, both dated July 15, 2004. We explain in the preamble of the supplemental NPRM that these EMBRAER Service Bulletins refer to Rolls-Royce Service Bulletin AE3007A–73–067 and AE3007A–73–069, respectively, as additional sources of service information for replacing the FADEC assemblies. We find that doing the actions specified in Rolls-Royce Service Bulletin AE3007A–73–067 or AE3007A–73–069 is acceptable for compliance with the corresponding actions required by paragraph (h) of this AD, provided that all applicable EICAS, CMC, and IC–600 upgrades; as well as any other applicable actions associated with upgrading the EICAS, CMC, or IC–600; are also done, as specified in paragraph 1.C., ''Description—Time for Accomplishment,'' of EMBRAER Service Bulletin 145–73–0022 or 145–73–0024, both Revision 01, as required by paragraph (h) of this AD. No change to the AD is needed in this regard.

Clarification of AMOC Paragraph

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

Conclusion

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

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modify the TAT sensor heating system	8	$65	$443	$963	434	Up to $417,942.

For airplanes modified in accordance with Revisions 04 through 08 of EMBRAER Service Bulletin 145–30–0028, it will take about 1 work hour per airplane to do the additional modification specified in Part III of the Accomplishment Instructions of the service bulletin, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of doing this required action is $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13

by adding the following new airworthiness directive (AD):

2005–22–08 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14352. Docket No. FAA–2004–18564; Directorate Identifier 2004–NM–16–AD.

Effective Date

(a) This AD becomes effective November 30, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; as identified in EMBRAER Service Bulletin 145–30–0028, Revision 10, dated March 22, 2005; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report indicating that the fully automated digital electronic control (FADEC) unit failed to compensate for ice accretion on the engine fan blades due to a false temperature signal from the total air temperature (TAT) sensor to the FADEC. We are issuing this AD to prevent failure of the TAT sensor, which could result in insufficient thrust to take off or (if coupled with the loss of an engine during takeoff) to abort the takeoff in a safe manner, and consequent reduced controllability of the airplane.

Compliance

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

Modification

(f) Within 180 days after the effective date of this AD: Modify the TAT sensor heating system in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–30–0028, Revision 10, dated March 22, 2005.

Modifications Done According to Previous Revisions of the Service Bulletin

(g) Actions done before the effective date of this AD are acceptable for compliance with the corresponding requirements of this AD as specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Modifications in accordance with EMBRAER Service Bulletin 145–30–0028, Revision 09, dated March 1, 2004, are acceptable for compliance with paragraph (f) of this AD.

(2) Modifications in accordance with the revisions of the service bulletin in Table 1 of this AD are acceptable for compliance with the corresponding action in this AD, provided that the additional actions specified in PART III of the Accomplishment Instructions of EMBRAER Service Bulletin 145–30–0028, Revision 09, dated March 1, 2004, or Revision 10, dated March 22, 2005, are accomplished within the compliance time required by paragraph (f) of this AD.

TABLE 1.—PREVIOUS REVISIONS OF THE SERVICE BULLETIN

EMBRAER Service Bulletin	Revision	Date
145–30–0028	04	March 13, 2001.
145–30–0028	05	May 24, 2001.
145–30–0028	06	September 26, 2001.
145–30–0028	07	April 10, 2003.
145–30–0028	08	August 20, 2003.

Credit for Replacement of FADEC Assemblies

(h) Replacing the existing FADEC assemblies with new or modified FADEC assemblies that include software version 7.6 or 8.0, in accordance with the Accomplishment Instructions of the applicable service bulletin listed in Table 2 of this AD, is acceptable for compliance with paragraph (f) of this AD. If the FADEC assemblies are replaced with new or modified assemblies as specified in this paragraph, all applicable engine indication and crew alerting system (EICAS), central maintenance computer (CMC), and IC–600 upgrades; as well as any other applicable actions associated with upgrading the EICAS, CMC, or IC–600; must also be done, as specified in the section of the service bulletin identified in the ''Paragraph Where Upgrades are Identified'' column of Table 2 of this AD.

TABLE 2.—SERVICE BULLETINS FOR UPGRADING FADEC ASSEMBLIES

For EMBRAER Model—	EMBRAER Service Bulletin	Revision	Date	Paragraph where upgrades are identified
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0021	Original	July 23, 2004	1.C., ''Description—Time for Accomplishment''.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0022	01	July 15, 2004	1.C., ''Description—Time for Accomplishment''.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0023	Original	June 28, 2004	1.C., ''Description—Time for Accomplishment''.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0024	01	July 15, 2004	1.C., Description—Time for Accomplishment''.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0025	Original	July 23, 2004	1.C., ''Description—Time for Accomplishment''.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0027	Original	March 15, 2005	1.B., ''Concurrent Requirements''.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0028	Original	March 15, 2005	1.B., ''Concurrent Requirements''.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0029	Original	May 4, 2005	1.B., ''Concurrent Requirements''.

TABLE 2.—SERVICE BULLETINS FOR UPGRADING FADEC ASSEMBLIES—Continued

For EMBRAER Model—	EMBRAER Service Bulletin	Revision	Date	Paragraph where upgrades are identified
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0029	01	June 27, 2005	1.B., ''Concurrent Requirements''.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0030	Original	May 5, 2005	1.B., ''Concurrent Requirements''.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, –145EP.	145–73–0031	Original	May 5, 2005	1.B., ''Concurrent Requirements''.
EMB–135BJ	145LEG–73–0003	01	July 15, 2004	1.C., ''Description—Time for Accomplishment''.
EMB–135BJ	145LEG–73–0004	02	October 6, 2004	1.C., ''Description—Time for Accomplishment''.
EMB–135BJ	145LEG–73–0005	Original	June 7, 2005	1.D., ''Description''.
EMB–135BJ	145LEG–73–0006	Original	March 8, 2005	1.B., ''Concurrent Requirements''.
EMB–145XR	145–73–0026	Original	June 28, 2004	1.C., ''Description—Time for Accomplishment''.

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) Brazilian airworthiness directive 2004–01–02R2, dated November 29, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use EMBRAER Service Bulletin 145–30–0028, Revision 10, dated March 22, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, 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 October 18, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–21310 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20699; Airspace Docket No. 04–ASO–19]

RIN 2120–AA66

Establishment of Area Navigation Instrument Flight Rules Terminal Transition Routes (RITTR); Cincinnati, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes three Area Navigation Instrument Flight Rules Terminal Transition Routes (RITTR) in the Cincinnati, OH, terminal area. The FAA originally proposed to establish four routes as part of this action, but one route (T–212) was deleted because it did not meet RITTR design criteria and its short length would provide limited benefits. RITTR's are low altitude Air Traffic Service (ATS) routes, based on Area Navigation (RNAV), for use by aircraft having Instrument Flight Rules (IFR)-approved Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) equipment. The FAA is taking this action to enhance safety and facilitate the more flexible and efficient use of the navigable airspace in the Cincinnati terminal area.

EFFECTIVE DATE: 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:

History

On July 6, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish four RITTR's in the Cincinnati, OH, terminal area (70 FR 38826). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. Two comments were received in response to the NPRM.

Analysis of Comments

The Aircraft Owners and Pilots Association wrote in support of the proposal. The second commenter expressed general support for the concept of terminal transition routes to assist IFR traffic transitioning Class B airspace, but stated that the proposed Cincinnati RITTRs do not accomplish this, and that IFR traffic (usually general aviation flights) would continue to be forced to make long detours around the Class B airspace. The commenter recommended that the FAA design transition routes that extend diagonally (northwest to southeast and southwest to northeast) across the Cincinnati/Northern Kentucky International Airport (CVG) Class B airspace area. The FAA responds that these RITTRs are

part of the initial steps in providing RNAV-based alternative routes through Class B airspace at major airports. A number of factors were considered in the design of the Cincinnati RITTRs, including current arrival and departure traffic patterns at CVG, general aviation traffic flows transitioning the area, and chart clutter. The proposed RITTRs do provide more direct alternative routes than are currently available via the Federal airway structure in the CVG terminal area. As operational experience is gained with the RITTR program, refinements to the route structure will be made where needed. While the FAA is not adding additional CVG RITTRs at this time, it will consider the recommendation for additional CVG RITTRs in future en route and terminal area NAS efficiency reviews.

Discussion

In reviewing the configuration of the proposed RITTRs, the FAA determined that several adjustments to the routes as proposed in the NPRM are required. One of the design criteria for RITTRs specifies that the routes must begin and end at a fix or navigation aid located on the existing Federal airway structure. The purpose of this requirement is to provide connectivity between the RITTR and the low altitude en route structure to enhance the expeditious movement of suitably equipped en route IFR aircraft through or around a Class B airspace area. The proposed routes T–212, T–215, and T–217 did not fully meet this criteria. As a result, the following corrective action is being taken in this rule. Proposed route T–212 is withdrawn. It was determined that, due to the short length of route T–212 (less than 15 miles), the route would be of minimal usefulness to the National Airspace System (NAS). To remedy the problem with the other two routes, the FAA is making the following changes. Route T–215, as proposed, extended between the Lexington, KY, (HYK) very high frequency omnidirectional range/tactical air navigation (VORTAC) and the new GAMKE, IN, waypoint (WP). However, the proposed GAMKE WP is not located on the airway structure. Therefore, GAMKE will be relocated slightly south of its proposed position to place it on existing Federal Airway V–47. This rule adjusts the GAMKE latitude and longitude coordinates to reflect the change. This change will bring route T–215 into compliance with the design criteria.

Similarly, route T–217 does not meet the design criteria because one of its end points, the Springfield, OH, (SGH) very high frequency omnidirectional range/distance measuring equipment (VOR/DME) is not a part of the airway structure. To remedy this discrepancy, route T–217 will be extended north of SGH to the existing BONEE fix, which is located on Federal Airway V–12. In addition, a minor realignment of T–217 will be made to the south of SGH to cross the existing PRUDE, OH, fix, which is located on V–5. This will insert two additional links to the VOR Federal airway structure in the T–217 description.

Finally, in the NPRM, the BOSTR, HEDEN, and MILAN points were identified as WPs. These points are actually existing charted ''fixes,'' therefore an editorial change to the affected route descriptions is being made in this rule to replace ''WP'' with ''fix.''

With the exception of editorial changes, and the changes discussed above, this amendment is the same as that proposed in the notice.

Low altitude Area Navigation Routes are published in paragraph 6011 of FAA Order 7400.9N dated September 1, 2005 and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The routes listed in this document will be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing three RITTRs, designated T–213, T–215, and T–217, in the CVG terminal area. These routes will be depicted in blue on the appropriate IFR en route low altitude charts. RITTRs are low altitude RNAV routes designed to facilitate the expeditious movement of IFR overflight traffic around or through certain congested terminal airspace areas. The routes may be used by GNSS-equipped aircraft that are capable of filing flight plan equipment suffix ''/G.'' The FAA is taking this action to enhance safety and facilitate the more flexible and efficient use of the navigable airspace for en route IFR aircraft transitioning through the CVG Class B airspace area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

The Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, 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 6011—Area Navigation Routes

* * * * *

T–213 Louisville, KY to Richmond, IN [New]

Louisville, KY (IIU)
VORTAC
(Lat. 38°06′13″ N., long. 85°34′39″ W.)
GAMKE, IN
WP
(Lat. 38°46′13″ N., long. 85°14′35″ W.)
MILAN, IN
Fix
(Lat. 39°21′22″ N., long. 85°19′01″ W.)
Richmond, IN (RID)
VORTAC
(Lat. 39°45′18″ N., long. 84°50′20″ W.)

* * * * *

T–215 Lexington, KY to GAMKE, IN [New]

Lexington, KY (HYK)
VORTAC
(Lat. 37°57′59″ N., long. 84°28′21″ W.)
GAMKE, IN
WP
(Lat. 38°46′13″ N., long. 85°14′35″ W.)

* * * * *

T–217 Lexington, KY to BONEE, OH [New]

Lexington, KY (HYK)
VORTAC
(Lat. 37°57′59″ N., long. 84°28′21″ W.)
BOSTR, OH
Fix
(Lat. 38°53′08″ N., long. 84°04′58″ W.)
HEDEN, OH
Fix

(Lat. 39°16′45″ N., long. 84°02′02″ W.)
PRUDE, OH
Fix
(Lat. 39°25′45″ N., long. 83°56′59″ W.)
Springfield, OH (SGH)
VOR/DME
(Lat. 39°50′12″ N., long. 83°50′42″ W.)
BONEE, OH
Fix
(Lat. 40°03′09″ N., long. 83°56′56″ W.)

* * * * *

Issued in Washington, DC on October 19, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–21318 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22100; Airspace Docket No. 05–AEA–16]

Amendment of Class E Airspace; Binghamton, NY

AGENCY: Federal Aviation Administration [FAA] DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Binghamton, NY. The development of multiple area navigation (RNAV) Standard Instrument Approach Procedures (SIAP) for numerous airports within the Binghamton, NY geographical area with approved Instrument Flight Rules (IFR) operations and the resulting overlap of designated Class E–5 airspace have made this action necessary. This action consolidates the Class E–5 airspace designations for five airspace and one heliport and results in the rescission of the five Class E–5 descriptions through separate rulemaking action. The area will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace and Operations, ETSU, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On August 23, 2005, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by consolidating existing Class E–5 airspace designations in the Binghamton, NY metropolitan area and incorporating those areas into the Binghamton, NY description was published in the **Federal Register** (70 FR 49221–49222). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface are published in paragraph 6005 of FAA Order 7400.9N, dated September 1, 2005 and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 ft above the surface for aircraft conducting IFR operations within the Binghamton, NY Class E–5 airspace description. The amendment consolidates the Class E–5 airspace descriptions for Cortland, NY; Elmira, NY; Ithaca, NY; Endicott, NY; ans Sayre, PA, into one airspace designation for Binghamton, NY, and the designations for those areas will be removed by separate rulemaking.

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

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

Adoption of the Amendment

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

Paragraph 6005 Class E airspace ares extending upward from 700 ft above the surface of the earth.

* * * * *

AEA NY E5 Binghamton, NY (Revised)

The airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 41°53′35″ N., long. 75°56′07″ W., to lat. 41°52′45″ N., long. 76°55′49″ W., to lat. 42°10′28″ N., long. 77°10′21″ W., to lat. 42°45′20″ N., long. 76°39′27″ W., to lat. 42°43′45″ N., long. 76°07′32″ W., to lat. 42°15′10″ N., long. 75°40′40″ W., to the point of beginning, excluding that portion that coincides with the Towanda, PA Class E airspace area.

* * * * *

Issued in Jamaica, New York, on October 11, 2005.

John G. McCartney,

Acting Area Director, Eastern Terminal Operations.

[FR Doc. 05–21320 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22494; Airspace Docket No. 05–AEA–22]

Amendment of Class E Airspace; Cortland, NY; Ithaca, NY; Elmira, NY; Endicott, NY; Sayre, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action removes the description of the Class E airspace designated for Cortland, NY, Cortland County-Chase Field Airport (N03); Ithaca, NY, Tompkins County Airport (ITH); Elmira, NY, Elmira/Corning Regional Airport (ELM); Endicott, NY, Tri-Cities Airport (CZG); and Sayre, PA,

Robert Parker Hospital Heliport. The affected Class E–5 airspace for the airports included in these descriptions will be consolidated into the amended Binghamton, NY airspace description contained in Docket No. FAA–2005–22100, Airspace Docket No. 05–AEA–16, effective February 16, 2006.

DATES: Effective date: February 16, 2006.

Comment Date: Comments must be received on or before November 25, 2005.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–22494; Airspace Docket No. 05–AEA–22 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the rule, any comments received, and any final disposition in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Area Director, Eastern Terminal Operations, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434–4890.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace and Operations, ETSU, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Although this action is a final rule, which involves the amendment of Class E airspace surrounding Binghamton, NY, by consolidating that airspace into one description, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the description of Class E airspace in the Binghamton, NY area by removing the airspace designations for Cortland, NY, Cortland County-Chase Field Airport (N03); Ithaca, NY, Tompkins County Airport (ITH); Elmira, NY, Elmira/Corning Regional Airport (ELM); Endicott, NY, Tri-Cities Airport (CZG); and Sayre, PA, Robert Parker Hospital Heliport. It consolidates those airspace areas into the amended Binghamton, NY description. The proliferation of airports with Instrument Flight Rule (IFR) operations within the Binghamton, NY geographic area has resulted in the overlap of numerous Class E airspace areas that complicate the chart depictions.

This action clarifies the airspace and diminishes the scope and complexity of charting. The IFR airports within those areas will be incorporated into the Binghamton, NY Class E airspace area. Accordingly, since this action merely consolidates these airspace areas into one airspace designation and has inconsequential impact on aircraft operations in the area, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have 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, Incorporated by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

■ 1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005 and effective September 16, 2005, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet of more above the surface of the earth.

* * * * *

AEA NY E5 Cortland, NY [Removed]

AEA NY E5 Ithaca, NY [Removed]

AEA NY E5 Elmira, NY [Removed]

AEA NY E5 Endicott, NY [Removed]

AEA PA E5 Sayre, PA [Removed]

* * * * *

Issued in Jamaica, New York on October 11, 2005.

John G. McCartney,

Acting Area Director, Eastern Terminal Operations.

[FR Doc. 05–21321 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 2005P–0397]

Medical Devices; Immunology and Microbiology Devices; Classification of Cystic Fibrosis Transmembrane Conductance Regulator Gene Mutation Detection System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the cystic fibrosis transmembrane conductance regulator (CFTR) gene

mutation detection systems into class II (special controls). The special control that will apply to the device is the guidance document entitled ''Class II Special Controls Guidance Document: CFTR Gene Mutation Detection Systems.'' The agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that will serve as the special control for the device.

DATES: This final rule is effective November 25, 2005. The classification was effective May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Zivana Tezak, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0597.

SUPPLEMENTARY INFORMATION:

I. What is the Background of this Rulemaking?

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or class II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request that FDA classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification (section 513(f)(2) of the act).

In accordance with section 513(f)(1) of the act, FDA issued an order on April 1, 2005, classifying the Tm Bioscience Corp., Tag-It™ Cystic Fibrosis Kit into class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On April 5, 2005, Tm Bioscience Corp., submitted a petition requesting classification of the Tag-It™ Cystic Fibrosis Kit under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II.

In accordance with section 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the Tm Bioscience Corp., Tag-It™ Cystic Fibrosis Kit can be classified into class II with the establishment of special controls. FDA believes these special controls will provide reasonable assurance of safety and effectiveness of the device.

The device is assigned the generic name ''cystic fibrosis transmembrane conductance regulator (CFTR) gene mutation detection system'' and it is identified as a device used to simultaneously detect and identify a panel of mutations and variants in the CFTR gene. It is intended as an aid in confirmatory diagnostic testing of individuals with suspected cystic fibrosis (CF), carrier identification, and newborn screening. This device is not intended for stand-alone diagnostic purposes, prenatal diagnostic, pre-implantation, or population screening. CFTR gene mutation detection systems may consist of different reagents and instruments, including polymerase chain reaction (PCR) primers, hybridization matrices, thermal cyclers, sequencers, signal detection instruments, and software packages.

FDA has identified the risks to health associated specifically with this type of device as improper clinical recommendations and improper medical patient management due to failure of the test to perform as indicated or errors in interpretation of results. Specifically, in the context of carrier-screening in adults, a false-negative or false-positive result or interpretation could lead to inaccurate estimates of a couple's risk of having a child with cystic fibrosis. In the context of assisting in the diagnosis of CF in newborns and children, a false-negative could lead to a delay in the definitive diagnosis and treatment; a false-positive could lead to unnecessary or inappropriate treatment.

FDA believes that the class II special controls guidance document aids in mitigating the potential risks to health by providing recommendations for validation of performance characteristics, as well as for labeling. The guidance document also provides information on how to meet premarket (510(k)) submission requirements for the device. FDA believes that the special controls guidance document, in addition to general controls, addresses the risks to health identified previously and provides reasonable assurance of the safety and effectiveness of the device. Therefore, on May 9, 2005, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this device by adding § 866.5900.

Following the effective date of this final rule, any firm submitting a 510(k) premarket notification for a CFTR gene mutation detection system will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device and, therefore, the type of device is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the CFTR gene

mutation detection system they intend to market.

II. What Is the Environmental Impact of This Rule?

The agency has determined under 21 CFR 25.34(b) 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.

III. What Is the Economic Impact of This Rule?

FDA has examined the impacts of the final rule under Executive Order 12866 and 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; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action as defined by the Executive order and so it not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because classification of this device into class II will relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the final rule will not 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 includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (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 final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Does This Final Rule Have Federalism Implications?

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the 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, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. How Does This Rule Comply with the Paperwork Reduction Act of 1995?

FDA concludes that this rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) is not required.

FDA also concludes that the special controls guidance document identified by this rule contains information collection provisions that are subject to review and clearance by OMB under the PRA. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of the draft guidance entitled ''Class II Special Controls Guidance Document: CFTR Gene Mutation Detection Systems.''

VI. What References are on Display?

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Tm Bioscience Corp., dated April 4, 2005.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

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

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

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

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

■ 2. Add § 866.5900 to subpart F to read as follows:

§ 866.5900 Cystic fibrosis transmembrane conductance regulator (CFTR) gene mutation detection system.

(a) *Identification.* The CFTR gene mutation detection system is a device used to simultaneously detect and identify a panel of mutations and variants in the CFTR gene. It is intended as an aid in confirmatory diagnostic testing of individuals with suspected cystic fibrosis (CF), carrier identification, and newborn screening. This device is not intended for stand-alone diagnostic purposes, prenatal diagnostic, pre-implantation, or population screening.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance document entitled ''Class II Special Controls Guidance Document: CFTR Gene Mutation Detection System.'' See § 866.1(e) for the availability of this guidance document.

Dated: October 17, 2005.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 05–21348 Filed 10–25–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–124]

RIN 1625–AA–09

Drawbridge Operation Regulations; Knapps Narrows, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Route 33/Knapps Narrows Bridge, at mile 0.4, across Knapps Narrows, at Tilghman, Maryland. This deviation allows the drawbridge to remain closed-to-navigation each day from 9 p.m. to 5 a.m., beginning on Monday, October 24 until Friday, October 28, 2005, to facilitate mechanical repairs.

DATES: The deviation is effective from 9 p.m. to 5 a.m. from October 24 until October 28, 2005.

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

FOR FURTHER INFORMATION CONTACT: Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422.

SUPPLEMENTARY INFORMATION: The Route 33/Knapps Narrows Bridge, a bascule-type drawbridge, has a vertical clearance in the closed position to vessels of 7 feet, at mean high water.

Covington Machine and Welding, Inc. (CMW), is the contractor engaged to perform these repairs for the Maryland State Highway Administration (SHA), the bridge owner. CMW, on behalf of SHA, requested a temporary deviation from the operating regulations for the Route 33/Knapps Narrows Bridge, set out in 33 CFR 117.5, that requires to bridge to open promptly and fully for the passage of vessels when a request to open is given.

CMW requested the temporary deviation to close the Route 33/Knapps Narrow Bridge to navigation to facilitate replacing leaking oil seals in the main drive gear reducer and the hydraulic braking system of the draw span. The lift span will be locked in the closed-to-navigation position each day from 9 p.m. to 5 a.m. beginning on Monday, October 24, 2005 until and including Friday, October 28, 2005. At all other times, the bridge will operate in accordance with 33 CFR 117.5.

The Coast Guard has informed the known users of the waterway of the closure periods for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: October 18, 2005.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 05–21322 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP St. Petersburg 05–120]

RIN 1625–AA00

Safety Zone Regulation; Tampa Bay, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Tampa Bay, Florida, in the vicinity of the Clearwater Memorial bascule bridge. This safety zone is being established to protect mariners from the hazards associated with the blasting demolition of the concrete portions of the Clearwater Memorial bascule bridge. This rule is necessary to provide for the safety of life on the navigable waters of the United States.

DATES: This rule is effective from 9:30 a.m. on October 4, 2005 through 2 p.m. on November 8, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP St. Petersburg 05–120] and are available for inspection or copying at Coast Guard Sector St. Petersburg, Prevention Department, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jennifer Andrew at Coast Guard Sector St. Petersburg, Prevention Department, (813) 228–2191 Ext 8203.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The necessary details for the blasting demolition of the Clearwater Memorial bascule bridge were not provided with sufficient time remaining to publish an NPRM. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to minimize potential danger to the public during the blasting demolition of the Clearwater Memorial bascule bridge. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction along with Coast Guard assets on scene who will also provide notice of the safety zone to mariners.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

PCL construction was contracted to build a fixed bridge to replace the Clearwater Memorial Causeway Bridge and remove the existing bridge. The fixed bridge was completed early September and the removal of the bascule bridge was commenced on September 12, 2005. On September 13, 2005 PCL contacted Coast Guard Sector St. Petersburg Prevention Department to discuss blasting the large concrete portions of the bascule bridge directly adjacent to the navigation channel along with the concrete counterweights for the metal bridge leafs. PCL will conduct two separate blasts on two different days to break up the concrete into smaller sections for removal. The first blast will be conducted tentatively on October 5, 2005, at approximately 7:30 a.m. This first blast will fracture the main concrete vertical portions adjacent to the channel from the top to three feet above the waterline. The second blast will be conducted tentatively on October 26, 2005, at approximately 7:30 a.m. This second and final blast will fracture the remaining three feet and the 16 feet of bridge below the waterline. The use of explosives and the proximity of the concrete bridge structure to the navigable channel present a hazard to mariners transiting the area. This safety zone is being established to ensure the safety of life on the navigable waters of the United States.

Discussion of Rule

The safety zone will extend out from the Clearwater Memorial Causeway bascule Bridge in a 1,000 foot radius. Vessels and persons not under contract or employees of PCL are prohibited from entering, anchoring or transiting within this zone unless authorized by the Captain of the Port St. Petersburg or his designated representative. This safety zone is effective from 7:30 a.m. on October 4, 2005, through 2 p.m. on November 8, 2005. The Coast Guard does not know the exact dates that this safety zone will be enforced at this time. Coast Guard Sector St. Petersburg will give notice of the enforcement of the safety zone by issuing a Broadcast Notice to Mariners beginning 24 to 48 hours before the blasting is scheduled to begin. On-scene notice will be provided by local Coast Guard and Pinellas

County Sheriff marine units enforcing the safety zone.

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. The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary because the safety zone will be in effect for a limited period of time and vessels may enter with the express permission of the Captain of the Port of St. Petersburg or his designated representative.

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 may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit within a 1,000 foot radius from the Clearwater Memorial Causeway bascule Bridge. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only be enforced in a location where traffic is minimal and for a limited time when vessel traffic is expected to be extremely low. Additionally, traffic will be allowed to enter the zone with the permission of the Captain of the Port St. Petersburg or his designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees 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)(g), of the Instruction, from further environmental documentation.

This rule is a safety zone and therefore fits the category described in paragraph (34)(g). An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new section 165.T07–120 is added to read as follows:

§ 165.T07–120 Safety zone; Tampa Bay, Florida.

(a) *Regulated Area.* The Coast Guard is establishing a safety zone on the waters of the Intracoastal Waterway in the vicinity of the Clearwater Memorial Bascule bridge. The safety zone encompasses all waters within a 1,000 foot radius of the Clearwater Memorial Bascule bridge located at 27°58′00″ N, 82°48′17″ W.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this Regulated Area is prohibited to all vessels and persons without the prior permission of the Coast Guard Captain of the Port St Petersburg or his designated representative.

(c) *Effective Period.* This Safety Zone is effective from 7:30 a.m. on October 4, 2005 through 2 p.m. on November 8, 2005 and will be enforced when a Coast Guard and/or Pinellas County Sheriff marine unit is on scene.

Dated: October 4, 2005.

J.A. Servidio,

Captain, U.S. Coast Guard, Captain of the Port, St Petersburg, Florida.

[FR Doc. 05–21396 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket # R08–OAR–2005–UT–0002; FRL–7987–9]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; State Implementation Plan Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: When EPA approved Utah State Implementation Plan (SIP) revisions for the Salt Lake City Carbon Monoxide (CO) Maintenance Plan and related Vehicle Inspection and Maintenance (I/M) Program for Salt Lake County, we inadvertently used an invalid acronym for the Utah Annotated Code. EPA is correcting this error with this document.

DATES: This rule is effective on November 25, 2005.

FOR FURTHER INFORMATION CONTACT: Domenico Mastrangelo, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466, phone (303) 312–6436, and e-mail at: *mastrangelo.domenico@epa.gov.*

SUPPLEMENTARY INFORMATION:

(i) Throughout this document, wherever *we, us* or *our* is used it means the Environmental Protection Agency.

(ii) The initials *SIP* mean or refer to State Implementation Plan.

(iii) The word *State* means the State of Utah, unless the context indicates otherwise.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect acronym in a previous rulemaking. Thus, notice and public comment procedures are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

I. Correction

*Correction for the **Federal Register** Document Published on August 1, 2005 (70 FR 44055)*

On August 1, 2005 we published a final rule approving the revised Salt Lake City Carbon Monoxide Maintenance Plan and related revisions submitted by the Governor of Utah on October 19, 2004. When we published this rule, within the regulatory text we incorrectly referred to the Utah Annotated Code using the acronym UACR instead of UAC. Therefore, we are correcting the regulatory text in 40 CFR 52.2320(c)(60) to replace all references to UACR with UAC.

II. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 209 Stat. 48 (1995)). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

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

This technical correction action does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule 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 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.*). EPA's compliance with these statutes and Executive Orders for the underlying rules is discussed in the August 1, 2005 rule approving the revised Salt Lake City Carbon Monoxide Maintenance Plan and related revisions submitted by the Governor of Utah on October 19, 2004.

The Congressional Review Act (CRA), 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement, 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of November 25, 2005. 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**. This correction to the identification of plan for Utah is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 14, 2005.

Robert E. Roberts,

Regional Administrator, Region VIII.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[CORRECTED]

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

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

Subpart TT—UTAH

§ 52.2320 [Amended]

■ 2. Section 52.2320 is amended in paragraphs (c)(60) introductory text, (c)(60)(i)(A), and (c)(60)(i)(B) by revising ''UACR'' to read ''UAC'' wherever it appears.

[FR Doc. 05–21266 Filed 10–25–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 00–258; FCC 05–172]

Advanced Wireless Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallocates the 2155–2160 MHz band for Fixed and Mobile services and designates the 2155–2175 MHz band for Advanced Wireless Service (AWS) use. We continue our ongoing efforts to promote spectrum utilization and efficiency with regard to the provision of new services, including Advanced Wireless Services (AWS).

DATES: Effective November 25, 2005.

FOR FURTHER INFORMATION CONTACT: Priya Shrinivasan, Office of Engineering & Technology, (202) 418–7005.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Eighth Report and Order*, ET Docket No. 00–258, FCC 05–172, adopted September 23, 2005, and released September 29, 2005. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

Summary of the Report and Order

1. In the *Eighth Report and Order* (''Eighth R&O'') in ET Docket No. 00–258, the Commission continues its ongoing efforts to promote spectrum utilization and efficiency with regard to the provision of new services, including Advanced Wireless Services (AWS). Advanced wireless systems could provide, for example, a wide range of voice, data and broadband services over a variety of mobile and fixed networks. Specifically, the Commission reallocates the 2155–2160 MHz band for Fixed and Mobile services and designates the 2155–2175 MHz band for AWS use.

2. Based on the Commission's determination that additional spectrum is needed for AWS use, and because the characteristics of the 2155–2175 MHz band make it well suited for such use, concludes that designating this band for AWS will promote efficient use of the spectrum and allow for the rapid introduction of high-value services in the band. Because the 2155–2175 MHz band is adjacent to the 2110–2155 MHz and 2175–2180 MHz bands that have already been designated for AWS, an AWS designation for this band will create 70 MHz of contiguous spectrum that will promote the rapid introduction of new technologies and service offerings, and will foster the use of the highest potential spectrum. Furthermore, designation of the 2155–2175 MHz band for AWS use is consistent with the Commission's previous decisions to designate spectrum for AWS on a primary basis to support the types of high powered mobile applications associated with AWS and Broadband PCS expansion. In addition, as proposed, the Commission

allocates the 2155–2160 MHz band to Fixed and Mobile services in order to allow the provision of AWS in this band. Although commenters did not explicitly address the Commission's proposal to add a Mobile allocation to the 2155–2160 MHz band, such support is implicit in their support for redesignating the 2155–2175 MHz band for AWS use because a Mobile allocation is essential for the provision of AWS.

3. The Commission notes that it does not decide here how to assign this new AWS spectrum at 2155–2175 MHz but will consider this issue in a separate service rules proceeding at a later date. It also notes that a current bilateral agreement in the 2155–2160/62 kHz band between the United States and Canada provides for coordinated use of Broadband Radio Service (BRS) and Educational Broadband Service (EBS) along the common border. The sharing of the 2160/62–2175 MHz band between the United States and Canada is covered by Arrangement A of *the Agreement Concerning the Coordination and Use of Radio Frequencies Above Thirty Megacycles per Second*, with Annex, as amended. There are no agreements with Mexico in the 2155–2175 MHz band. Accordingly, the Commission notes that there may be a need to negotiate new or modified agreements to provide for more flexible use of the spectrum with Canada and Mexico along the common borders.

Final Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (RFA) [1] an Initial Regulatory Flexibility Analysis was incorporated in the *Third Notice of Proposed Rule Making* (Third NPRM) in ET Docket 00–258, 68 FR 12015, March 13, 2003.[2] The Commission sought written public comment on the proposals in the *Third NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Eighth Report and Order

5. The *Eighth Report and Order (Eighth R&O)* reallocates the 2155–2160 MHz band for Fixed and Mobile services and designates the 2155–2175 MHz band for the provision of advanced wireless services (AWS). The *Eighth R&O* is the latest in a series of decisions in ET Docket 00–258 allocating spectrum that can be used for the provision of new and innovative wireless communications services that we have collectively referred to as ''AWS.'' The provision of this spectrum serves the public interest by promoting the rapid deployment of efficient radio communications facilities and supports the goals of Section 7 of the Communications Act,[4] which sets forth a policy of encouraging the provision of new technologies and services to the public.

B. Summary of Significant Issues Raised by Public Comments in Response to the Supplemental IRFA

6. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of entities that will be affected by the rules.[5] The RFA defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [6] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[7] Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[8]

8. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[9] In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA has approved of this standard.[10] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[11] Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.[12]

9. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution,[13]

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00–258, IB Docket No. 99–81, *Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223 (2003).

[3] 5 U.S.C. 604.

[4] 47 U.S.C. 157.

[5] 5 U.S.C. 603(b)(3), 604(a)(3).

[6] 5 U.S.C. 601(6).

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, established one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the **Federal Register**.''

[8] 15 U.S.C. 632.

[9] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Report and Order,* 10 FCC Rcd 9589, 9593, paragraph 7 (1995) (''*MDS Auction R&O*''). The MDS and ITFS was renamed the Broadband Radio Service (BRS) and Educational Broadband Service (EBS), respectively. *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 MHz Band, WT Docket No. 03–66, *Report and Order and Further Notice of Proposed Rulemaking,* 19 FCC Rcd 14165 (2004).

[10] *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration (dated Mar. 20, 2003) (noting approval of $40 million size standard for MDS auction).

[11] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See MDS Auction R&O,* 10 FCC Rcd at 9608, paragraph 34.

[12] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for ''other telecommunications'' (annual receipts of $12.5 million or less). *See* 13 CFR 121.201, NAICS code 517910.

[13] 13 CFR 121.201, NAICS code 517510.

which includes all such companies generating $12.5 million or less in annual receipts.[14] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category that had operated for the entire year.[15] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million.[16] Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies. Because the Commission's action only affects MDS operations in the 2155–2160/62 MHz band, the actual number of MDS providers who will be affected by the proposed reallocation will only represent a small fraction of these small businesses.

10. *Fixed Microwave Services.* Microwave services include common carrier,[17] private-operational fixed,[18] and broadcast auxiliary radio services.[19] At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of the FRFA, we will use the SBA's definition applicable to Cellular and other Wireless Telecommunications companies—*i.e.*, an entity with no more than 1,500 persons.[20] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[21] Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more.[22] Thus, under this size standard, majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

11. The *Eighth R&O* reallocates the 2155–2160 MHz band and designates the 2155–2175 MHz band to support the introduction of new AWS applications. The item does not propose service rules. The ultimate use of the band will be determined by future proceedings that adopt specific service rules and, more generally, by market forces operating within the framework of such rules. Accordingly, the item contains no new reporting, recordkeeping, or other compliance requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

12. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[23]

13. In the *Eighth R&O,* we decided to provide additional spectrum to support the introduction of AWS because doing so will promote the rapid deployment of efficient radio communications. Another option would have been to not reallocate or designate the 2155–2160 MHz band. We rejected this alternative because doing so would have limited our ability to provide additional spectrum and done little to minimize the potential economic impact on small entities. Specifically, because incumbent users in the 2155–2160 MHz band are subject to a transition plan adopted in a separate proceeding and would ultimately be required to cease use of spectrum in this band, a decision to not reallocate the spectrum would only have a minimal, short-term effect on incumbent users yet make it much more likely that valuable spectrum resources would lie fallow. Additionally, the provision of additional spectrum that can be used to support AWS can directly benefit small business entities by providing new opportunities for the provision of innovative new fixed and mobile wireless services by such entities.

F. Report to Congress

14. The Commission will send a copy of the *Eighth R&O,* including this FRFA, in a report to be sent to Congress pursuant to the SBREFA.[24] In addition, the Commission will send a copy of the *Eighth R&O,* including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Eighth R&O* and the FRFA (or summaries thereof) will also be published in the **Federal Register**.[25]

Ordering Clauses

15. Pursuant to Sections 1, 4(i), 7(a), 301, 303(f), 303(g), 303(r), 307, 316, 332 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 157(a), 301, 303(f), 303(g), 303(r), 307, 316, and 332, this Eighth Report and Order *is Adopted* and that part 2 of the Commission's rules *is amended*, as specified in the regulatory text, effective November 25, 2005.

16. Pursuant to Section 5(c) of the Communications Act, as amended, 47 U.S.C. 155(c), the Office of Engineering and Technology and the Wireless Telecommunications Bureau *Are Granted Delegated Authority* to implement the requirement set forth in this Order.

17. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Eighth Report and Order, including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 2

Communications equipment, Reporting and recordkeeping requirements.

[14] *Id.*

[15] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4 (issued October 2000).

[16] *Id.*

[17] 47 CFR part 101 *et seq.* (formerly, part 21 of the Commission's rules) for common carrier fixed microwave services (except MDS).

[18] Persons eligible under parts 80 and 90 of the Commission's rules can use Private-Operational Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[19] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's rules. *See* 47 CFR, part 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[20] 13 CFR 121.201, NAICS code 517212.

[21] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5 (issued Oct. 2000).

[22] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[23] 5 U.S.C. 603(c).

[24] *See* 5 U.S.C. 801(a)(1)(A).

[25] *See* 5 U.S.C. 604(b).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 2 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended by revising page 34.

The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

1930-1970 FIXED MOBILE 5.388A 5.388B 5.388	1930-1970 FIXED MOBILE 5.388A 5.388B Mobile-satellite (Earth-to-space) 5.388	1930-1970 FIXED MOBILE 5.388A 5.388B 5.388	1850-2025	1850-2000 FIXED MOBILE NG177	RF Devices (15) Personal Communications (24) Fixed Microwave (101)
1970-1980 FIXED MOBILE 5.388A 5.388B 5.388					
1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389F				2000-2020 MOBILE-SATELLITE (Earth-to-space) US380 NG156	Satellite Communications (25)
2010-2025 FIXED MOBILE 5.388A 5.388B 5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.388 5.389C 5.389E 5.390	2010-2025 FIXED MOBILE 5.388A 5.388B 5.388		2020-2025 FIXED MOBILE NG177	
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space) 5.392			2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) 5.391 5.392 US90 US222 US346 US347 US393	2025-2110 FIXED NG118 MOBILE 5.391 5.392 US90 US222 US346 US347 US393	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)
2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388			2110-2120 US252	2110-2120 FIXED MOBILE US252	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)
2120-2160 FIXED MOBILE 5.388A 5.388B 5.388	2120-2160 FIXED MOBILE 5.388A 5.388B Mobile-satellite (space-to-Earth) 5.388	2120-2170 FIXED MOBILE 5.388A 5.388B	2120-2200	2120-2180 FIXED MOBILE NG153 NG178	
2160-2170 FIXED MOBILE 5.388A 5.388B 5.388 5.392A	2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.388 5.389C 5.389E 5.390	5.388			
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A 5.388 5.389A 5.389F 5.392A				2180-2200 MOBILE-SATELLITE (space-to-Earth) US380 NG168	Satellite Communications (25)

* * * * *

[FR Doc. 05–21406 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 00–258; FCC 05–172]

Advanced Wireless Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission requires Broadband Radio Service (BRS) licensees in the 2150–2160/62 MHz band to provide information on the construction status and operational parameters of each incumbent BRS system that would be the subject of relocation.

DATES: Effective October 26, 2005.

FOR FURTHER INFORMATION CONTACT: Priya Shrinivasan, Office of Engineering & Technology, (202) 418–7005.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, ET Docket No. 00–258, FCC 05–172, adopted September 23, 2005, released September 29, 2005. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

Summary of the Order

1. In order to assist the Commission in determining the scope of the new Advanced Wireless Services (AWS) entrants' obligation to relocate certain incumbent licensees in the 2150–2162 MHz band, the Commission will require Broadband Radio Service (BRS) licensees in the 2150–2160/62 MHz band to provide the information to the Commission within 60 days and 120 days of the effective date of this *Order* (the filing dates will correspond to information collection requirements for the Commission's Universal Licensing System). The Commission reallocated this spectrum for AWS by Report and Order, 68 FR 3455, January 24, 2003, and the accompanying Eighth Report and Order in ET Docket No. 00–258, FCC 05–172. Currently, neither the Commission nor the public has reliable information on the construction status and/or operational parameters of each BRS system in the 2150–2160/62 MHz band that would be subject to relocation. Pursuant to Section 4(i) of the Communications Act, 47 U.S.C. 154(i), the Commission believes that reliable, public data on each incumbent system that would be subject to relocation is essential well in advance of the planned auction of the 2150–2155 MHz band next year. It notes that the information required would ultimately be necessary in the context of relocation negotiations. Because the Commission now licenses the BRS service on the basis of geographic licensing areas, BRS licensees will be required to submit information on the locations and operating characteristics of BRS systems (*e.g.*, the location of base or fixed stations by coordinates, tower heights, power levels, etc.) in the 2150–2160/62 MHz band, on other system characteristics of BRS incumbents (*e.g.*, subscriber numbers and types of equipment used), and on categories of services provided (*e.g.*, one-way or two-way service, point-to-point or point-to-multipoint operations, data or analog video service). The Commission also will require BRS licensees to provide this information even if the spectrum is leased to third parties. Further, because the Commission proposes relocation on a link-by-link basis, BRS licensees will be required, as part of the information on system design in the band, to provide the number of links (including the connection between a base station and subscriber premises equipment) within the system for both point-to-point and point-to-multipoint systems. To the extent that a system uses both BRS channels 1 and 2 as part of the same service (*e.g.*, as a link to a two-way data service), BRS licensees will be required to make special note of this when providing their system information. The Commission notes that this list is not inclusive. This information will be collected through the Commission's Universal Licensing System (ULS) and made available to the public. To further this process, the Commission has delegated authority to the Office of Engineering and Technology and the Wireless Telecommunications Bureau to issue public notices setting forth the specific data required of BRS licensees, when it is to be filed and the procedures for filing this information. Finally, the Commission finds that there is good cause to make the requirement for BRS licensees to file information effective upon publication of the *Order* in the **Federal Register**. The Commission has provided BRS licensees with ample time to file the required information and the ability to use the ULS to submit the information easily. As noted, reliable data on each incumbent system that would be subject to relocation is essential well in advance of the planned auction of the 2150–2155 MHz band next year.

2. Pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. 154(i), this Order *is adopted*, October 26, 2005. The *Order* contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, that are not effective until approved by the Office of Management and Budget (OMB).

3. Pursuant to Section 5(c) of the Communications Act, as amended, 47 U.S.C. 155(c), the Office of Engineering and Technology and the Wireless Telecommunications Bureau *Are Granted Delegated Authority* to implement the requirement set forth in this Order.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21408 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–170 and CG Docket No. 04–208; FCC 05–55]

Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved for three years the information collections contained in the *Truth-in-Billing and Billing Format*; *National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking (Second Report and Order).* The information collections contained in the *Second Report and*

Order, were approved by OMB on September 15, 2005. The *Second Report and Order* states that the Commission will publish a document in the **Federal Register** announcing the effective date of this rule.

DATES: 47 CFR 64.2400(b) published at 70 FR 29979 (May 25, 2005) is effective October 26, 2005.

FOR FURTHER INFORMATION CONTACT: Richard Smith, Policy Division, Consumer & Governmental Affairs Bureau at (202) 418–2512.

SUPPLEMENTARY INFORMATION: This document announces that, on September 15, 2005, OMB approved for three years the information collections contained in 47 CFR 64.2400(b), published at 70 FR 29979 (May 25, 2005). The OMB Control Number is 3060–0854. The Commission publishes this notice of the effective date of the rule. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please write to Leslie F. Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060–0854, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *Leslie.Smith@fcc.gov*, or you may call (202) 418–0217.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received approval from OMB on September 15, 2005, for the collections of information contained in 47 CFR 64.2400(b). The total annual reporting burden associated with this collection of information, including the time for gathering and maintaining the collections of information, is estimated to be: 5,309 respondents, a total annual hourly burden of 4,636,942 hours, and $15,418,000 in total annual costs. Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21295 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2657, MB Docket No. 03–156, RM–10721]

Digital Television Broadcast Service; Laredo, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Eagle Creek Broadcasting of Laredo, LLC, substitutes DTV channel 31 for KVTV's assigned DTV channel 14. *See* 68 FR 42662 (July 18, 2003). DTV channel 31 can be allotted to Laredo, Texas, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 27–31–19 N. and 99–31–19 W. with a power of 200, HAAT of 262 meters and with a DTV service population of 140 thousand. Since the community of Laredo is located within 275 kilometers of the U.S.-Mexico border, concurrence from the Mexican government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective November 25, 2005.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–156, adopted October 4, 2005, and released October 11, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 301–816–2820, facsimile 301–816–0169, or via-e-mail *joshir@erols.com.*

This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this Report & Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

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

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel 14 and adding DTV channel 31 at Laredo.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 05–21296 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2659; MB Docket No. 04–376; RM–11039]

Radio Broadcasting Services; Haven and Hutchinson, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Ad Astra per Aspera Broadcasting, Inc., reallots Channel 246C2 from Hutchinson to Haven, Kansas, and modifies Station KSKU(FM)'s license accordingly. *See* 69 FR 60344, October 8, 2004. Channel 246C2 can be allotted to Haven in compliance with the Commission's minimum distance separation

requirements with a site restriction of 24.9 kilometers (15.5 miles) southeast at petitioner's requested site. The reference coordinates for Channel 246C2 at Haven are 37–47–47 North Latitude and 97–31–59 West Longitude.

DATES: Effective November 21, 2005.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 04–376, adopted October 4, 2005, and released October 6, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 246C2 at Hutchinson; and by adding Haven, Channel 246C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–21299 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2660; MM Docket No. 01–219, RM–10238]

Radio Broadcasting Services; Rule, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Jeraldine Anderson, allots Channel 253A at Rule, Texas, as the community's second local FM service. Channel 253A can be allotted to Rule, Texas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.2 km (2.0 miles) southwest of Rule. The coordinates for Channel 253A at Rule, Texas, are 33–10–17 North Latitude and 99–55–24 West Longitude.

DATES: Effective November 21, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 01–219, adopted October 4, 2005, and released October 6, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *www.bcpiweb.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 253A at Rule.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–21298 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 70, No. 206

Wednesday, October 26, 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.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Filing of Constructive Removal Complaints by Administrative Law Judges; Reopening of the Comment Period

AGENCY: Merit Systems Protection Board.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Merit Systems Protection Board (MSPB or ''the Board'') is reopening the comment period for a proposed rule published in the **Federal Register** on August 16, 2005 (70 FR 48081). The proposed rule revised 5 CFR 1201.142 and concerned the filing of constructive removal complaints by administrative law judges. The Board is reopening the comment period because of the widespread disruption caused by hurricanes Rita and Katrina.

DATES: Written comments should be submitted on or before November 25, 2005.

ADDRESSES: Send or deliver comments to the Office of Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; fax: (202) 653–7130; or e-mail: *mspb@mspb.gov.*

FOR FURTHER INFORMATION CONTACT: Bentley Roberts, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; fax: (202) 653–7130; or e-mail: *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION: The Board's original notice of the proposed rule (70 FR 48081) contains the relevant supplementary information.

List of Subjects in Part 1201

Administrative personnel, Actions against administrative law judges, Actions filed by administrative law judges.

Bentley M. Roberts,
Clerk of the Board.

[FR Doc. 05–21389 Filed 10–25–05; 8:45 am]

BILLING CODE 7400–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0015; FRL–7988–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Two Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for two major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) pursuant to the Commonwealth of Pennsylvania's (Pennsylvania or the Commonwealth) SIP-approved generic RACT regulations. EPA is proposing to approve these revisions in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 25, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–PA–0015 by one of the following methods:

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

B. Agency Web site: *http://docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov*.

D. Mail: R03–OAR–2005–PA–0015, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–PA–0015. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov websites are 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 RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Pauline De Vose, (215) 814–2186, or by e-mail at *devose.pauline@epa.gov*.

SUPPLEMENTARY INFORMATION: On August 15, 2003, PADEP submitted revisions to the Pennsylvania SIP. These SIP revisions consist of source-specific operating permits and/or plan approvals issued by PADEP to establish and require RACT for two sources included in Pennsylvania's submittal letter pursuant to Pennsylvania's SIP-approved generic RACT regulations. This proposed rulemaking covers the Commonwealth's source-specific RACT determinations for two of those sources The remaining RACT determinations submitted by PADEP on August 15, 2003, are or will be the subject of separate rulemakings.

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, Pennsylvania is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing RACT for three classes of VOC sources are required under section 182(b)(2). The categories are:

(1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment;

(2) All sources covered by a CTG issued prior to November 15, 1990; and

(3) All major non-CTG sources.

The Pennsylvania SIP already has approved RACT regulations and requirements for all sources and source categories covered by the CTGs. The Pennsylvania SIP also has approved regulations to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. These regulations are commonly termed the ''generic RACT regulations.'' A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead establishes procedures for imposing case-by-case RACT determinations. The Commonwealth's SIP-approved generic RACT regulations consist of the procedures PADEP uses to establish and impose RACT for subject sources of VOC and NO_X. Pursuant to the SIP-approved generic RACT rules, PADEP imposes RACT on each subject source in an enforceable document, usually a Plan Approval (PA) or Operating Permit (OP). The Commonwealth then submits these PAs and OPs to EPA for approval as source-specific SIP revisions. EPA reviews these SIP revisions to ensure that the Pennsylvania DEP has determined and imposed RACT in accordance with the provisions of the SIP-approved generic RACT rules.

It must be noted that the Commonwealth has adopted and is implementing additional ''post RACT requirements'' to reduce seasonal NO_X emissions in the form of a NO_X cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the OTR. That regulation was approved as SIP revision on June 6, 2000 (65 FR 35842). Pennsylvania has also adopted 25 Pa Code Chapter 145 to satisfy Phase I of the NO_X SIP call. That regulation was approved as a SIP revision on August 21, 2001 (66 FR 43795). Federal approval of a source-specific RACT determination for a major source of NO_X in no way relieves that source from any applicable requirements found in 25 PA Code Chapters 121, 123 and 145.

II. Summary of the SIP Revisions

The following table identifies the sources and the individual plan approvals (PAs) and operating permits (OPs) which are the subject of this rulemaking.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source's name	County	Plan approval (PA #) Operating permit (OP #)	Source type	''Major source'' pollutant
The International Metals Reclamation Co	Lawrence	Op 37–243	Metals Recovery Facility	VOC.
Petrowax PA Inc.	Venango	PA 61–020	Refinery	VOC and NO_X.

Interested parties are advised that copies of Pennsylvania's SIP submittals for these sources, including the actual PAs and OPs imposing RACT, PADEP's evaluation memoranda and the sources' RACT proposals (referenced in PADEP's evaluation memoranda) are included and may be viewed in their entirety in both the electronic and hard copy versions of the docket for this final rule. As previously stated, all documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

EPA is approving these RACT SIP submittals because PADEP established and imposed these RACT requirements in accordance with the criteria set forth in its SIP-approved generic RACT regulations applicable to these sources. In accordance with its SIP-approved generic RACT rule, the Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these 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), nor will it 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 approve 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 proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, 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 rule 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 rule to approve source-specific RACT determinations established and imposed by the Commonwealth of Pennsylvania pursuant to its SIP-approved generic RACT regulations 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 Part 52

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

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

Dated: October 18, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–21372 Filed 10–25–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 00–258; FCC 05–172]

Advanced Wireless Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seek comment on the specific relocation procedures applicable to Broadband Radio Service (BRS) operations in the 2150–2160/62 MHz band, which the Commission recently decided will be relocated to the newly restructured 2495–2690 MHz band. We also seek comment on the specific relocation procedures applicable to Fixed Microwave Service (FS) operations in the 2160–2175 MHz band. We propose to generally follow our relocation policies delineated in our *Emerging Technologies* proceeding and as modified by subsequent decisions.

DATES: Comments must be filed on or before November 25, 2005, and reply comments must be filed on or before December 12, 2005.

ADDRESSES: You may submit comments, identified by [ET Docket No. 00–258], by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- E-mail: [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.
- Mail: [Optional: Include the mailing address for paper, disk or CD–ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Priya Shrinivasan, Office of Engineering and Technology, (202) 418–7005.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *NPRM of Proposed Rule Making,* ET Docket No. 00–258, FCC 05–172, adopted September 23, 2005, and released September 29, 2005. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or

overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of NPRM of Proposed Rulemaking

1. In the *Fifth NPRM of Proposed Rulemaking (Fifth NPRM)*, the Commission seeks to establish a new record, specifically with respect to relocation issues for the 2150–2160 MHz and 2160–2175 MHz bands as proposed in the NPRM. The Commission notes that it has previously sought comment on the use of *Emerging Technologies* policies in this proceeding (ET Docket No. 00–258) in different contexts and asks that parties file new comments on the issues in this *Fifth NPRM*, rather than incorporate by reference previously filed comments in this proceeding.

2. The Commission continues to believe that its relocation policy, with minor modifications to accommodate the type of incumbent operations that are the subject of relocation and to maintain consistency within the entire band at issue, is the best approach to meet its goal of providing an opportunity for early entry to the 2150–2160 MHz and 2160–2175 MHz bands for new Advanced Wireless Service (AWS) licensees, while minimizing the disruption to incumbent Broadband Radio Service (BRS) and Fixed Microwave Service (FS) operations during the transition. The NPRM therefore proposes to generally apply the Commission's relocation policy, as delineated in its *Emerging Technologies* proceeding and subsequent decisions, to the spectrum designated for AWS in this proceeding.

A. Relocation of BRS in the 2150–2160/62 MHz Band

3. This portion of the NPRM seeks comment on the relocation procedures new AWS entrants should follow when relocating BRS incumbent licensees from the 2150–2160/62 MHz band.

4. *Background.* In the *AWS Second R&O* in ET Docket No. 00–258, 68 FR 3455, January 24, 2003, the Commission reallocated and designated a 5 megahertz portion of the BRS band at 2150–2155 MHz for AWS use. Subsequently, in the *AWS Third NPRM*, also in ET Docket No. 00–258, 68 FR 12015, March 13, 2003, the Commission further explored the relocation needs for the BRS licensees in the 2150–2160/62 MHz band. On July 29, 2004, the Commission released the *BRS R&O and FNPRM* in WT Docket No. 03–66, 69 FR 72020 and 69 FR 72048, December 10, 2004, respectively, that initiated a fundamental restructuring of the 2495–2690 MHz band. This decision, which was intended to provide existing and new licensees with enhanced flexibility to provide high-value services, also included provisions by which existing BRS licensees in the 2150–2160/62 MHz band would be included in the newly established band plan, allowing these licensees to be integrated with similar operations. Specifically, the Commission adopted a band plan in which existing BRS channel 1 (2150–2156 MHz) would transition to the new BRS channel 1 at 2496–2502 MHz and existing BRS channel 2/2A (2156–2162 MHz) to the new BRS channel 2 at 2618–2624 MHz. The Commission notes that new entrants for spectrum now occupied by part of BRS channel 1 will be licensed in an upcoming AWS auction of the 2110–2155 MHz band. With respect to the 2155–2160/62 MHz band, which consists of BRS channels 2 and 2A and the upper one megahertz of BRS channel 1, the Commission has not yet established new service rules for this band. In the accompanying *Eighth R&O* in ET Docket No. 00–258, the Commission reallocated and designated the entire 2150–2160 MHz band for AWS use.

5. BRS operations in the 2150–2160/62 MHz band consist of two channels—channel 1 (2150–2156 MHz) and channel 2A (2156–2160 MHz). Licensees may also use channel 2 (2156–2162 MHz) on a limited basis in 50 cities. BRS operations in the band are now regulated under part 27 of the Commission's rules. In 1992, when the 2160–2165 MHz band was reallocated to emerging technologies, the Commission implemented a policy by which incumbent BRS licensees that were using the 2160–2162 MHz band would continue such use on a primary basis. However, any BRS station that applied for use of this band after January 16, 1992, would be granted a license only on a secondary basis to emerging technology use. In 1996, the Commission auctioned licenses for BRS channels on a Basic Trading Area (BTA) basis but noted that BRS channel 2 licenses using the 2160–2162 MHz band were secondary to emerging technology licenses. BRS operators are providing four categories of service offerings today: (1) Downstream analog video; (2) downstream digital video; (3) downstream digital data; and (4) downstream/upstream digital data. Licensees and lessees have deployed or sought to deploy these services via three types of system configuration: high-power video stations, high-power fixed two-way systems, and low-power, cellularized two-way systems. Traditionally, BRS licensees were authorized to operate within a 35-mile-radius protected service area (PSA) and winners of the 1996 MDS auction were authorized to serve Basic Trading Areas (BTAs) consisting of aggregations of counties. In the proceeding that restructured the BRS band at 2495–2690 MHz, the Commission adopted a geographic service area (GSA) licensing scheme for existing BRS incumbents. Therefore, BRS relocation procedures must take into account the unique circumstances faced by the various incumbent operations and the new AWS licensees.

1. Relocation Process

6. *Transition Plan.* The NPRM proposes to require the AWS entrant to relocate BRS operations on a link-by-link basis, based on interference potential as discussed below. The NPRM further proposes to allow the AWS entrant to determine its own schedule for relocating incumbent BRS operations so long as it relocates incumbent BRS licensees before beginning operation in a particular geographic area and subject to any other build-out requirements that may be imposed by the Commission on the AWS entrant. The Commission recognizes that this build-out period may take time because of the large service areas to be built out for new AWS networks but expects that the AWS licensees and the incumbent BRS

licensees will work cooperatively to ensure a smooth transition for incumbent operations.

7. In some instances relocation of BRS operations on a link-by-link basis may be infeasible (*e.g.*, where a transmitter serves numerous receive sites, only some of which may pose an interference issue), and thus in order to meet the comparable facility requirement for relocating BRS operations, it may be necessary for the AWS licensee to relocate more BRS facilities than an interference analysis conducted on a link-by-link basis might indicate as technically necessary. The Commission also recognizes that the AWS licensee is likely to deploy its service in some locations in a manner that does not correspond to the geography of the BRS service areas. For example, a BRS licensee's operations may extend beyond the AWS licensee's service area (*e.g.*, discrete transmit/receive combinations), and thus in order to meet the comparable facility requirement for relocating BRS operations, the AWS licensee may need to relocate BRS operations in the adjacent service area even though an AWS licensee does not have license coverage in that area. The NPRM therefore proposes to require that the AWS licensee relocate all incumbent BRS operations that would be affected by the new AWS operations, in order to provide BRS operators with comparable facilities. The Commission seeks comment on these transition plan proposals.

8. *Comparable Facilities.* In the *AWS Third NPRM*, the Commission proposed that if relocation were deemed necessary, BRS incumbents would be entitled to comparable facilities. In the *Emerging Technologies* proceeding, the Commission allowed new entrants to provide incumbents with comparable facilities using any acceptable technology. Under this policy, incumbents must be provided with replacement facilities that allow them to maintain the same service in terms of: (1) Throughput—the amount of information transferred within the system in a given amount of time; (2) reliability—the degree to which information is transferred accurately and dependably within the system; and (3) operating costs—the cost to operate and maintain the system. Thus, the comparable facilities requirement does not guarantee incumbents superior systems at the expense of new entrants. The Commission continues to believe that, to minimize disruption to existing services and to minimize the economic impact on licensees of those services, a similar approach is warranted for BRS. We note that our relocation policies do not dictate that systems be relocated to spectrum-based facilities or even to the same amount of spectrum as they currently use, only that comparable facilities be provided. Comparable facilities can be provided by upgrading equipment to digital technology and making use of efficient modulation and coding techniques that use less spectrum to provide the same communications capabilities. Given advances in technology, *e.g.*, changing from analog to digital modulation and the flexibility provided by our existing relocation procedures to make incumbents whole, we believe that these differences should be taken into account when providing comparable facilities. The NPRM therefore proposes to require that new AWS entrants provide comparable facilities to incumbents that are relocated, and seeks comment on this proposal.

9. The Commission further notes that under its relocation policies only stations with primary status are entitled to relocation. Because secondary operations, by definition, cannot cause harmful interference to primary operations nor claim protection from harmful interference from primary operations at frequencies already assigned or assigned at a later date, new entrants are not required to relocate secondary operations. As stated above, BRS stations licensed after 1992 to use the 2160–2162 MHz band are on a secondary basis. Thus, in some cases, a portion of BRS channel 2 has secondary status, and this portion would not be entitled to relocation under existing *Emerging Technologies* policies. Stations licensed prior to 1992 for BRS channel 2 (2156–2162 MHz) operate on a primary basis over the entire channel and thus, would be entitled to relocation. The NPRM proposes to apply the current relocation policies regarding stations with primary and secondary status to the BRS and seeks comment on this proposal.

10. The NPRM also seeks comment on how to apply the comparable facilities requirement to unique situations faced by BRS licensees. For example, the Commission recognizes that the incumbent BRS licensee may change the type of services it offers as it transitions to the new BRS band plan (*e.g.*, from 1-way to 2-way service or from fixed to mobile service), and seeks comment on how the comparable facilities policy would be satisfied in such a situation. The NPRM also seeks comment on how the relocation obligation of comparable facilities should be applied to post-1992 licensees operating on a combination of BRS channels 1 and 2/2A (*e.g.*, integrated for downstream 2-way broadband operations), considering these channels will likely transition to new channels in the restructured band at different times. For example, the Commission seeks comment on what the respective relocation obligations should be for AWS licensees in the five megahertz block of BRS channel 1 (2150–2155 MHz) who will be licensed as part of the upcoming AWS auction of the 2110–2155 MHz band and AWS licensees in the remaining one megahertz block (2155–2156 MHz) who will be licensed at a later date. In addition, we seek comment on whether replacement of customer premises equipment (CPE) in use at the time of relocation (*e.g.*, customer equipment that is used and will continue to be used in the provision of 2-way broadband operations) should be part of the comparable facilities requirement.

11. Because the Commission has already identified relocation spectrum in the 2495–2690 MHz band (2.5 GHz band) for BRS licensees currently in the 2150–2160/62 MHz band (2.1 GHz band), we also seek comment on a proposal whereby the Commission would reassign 2.1 GHz BRS licensees, whose facilities have not been constructed or are not in use per § 101.75 of the Commission's rules, to their corresponding frequency assignments in the 2.5 GHz band as part of the overall BRS transition. Specifically, the NPRM proposes to modify the licenses of these 2.1 GHz BRS licensees to assign them 2.5 GHz spectrum in the same geographic areas covered by their licenses upon the effective date of the *Report and Order* in this proceeding. Under this proposal, no subscribers would be harmed by immediately reassigning these licensees to the 2.5 GHz band, consistent with our policy. Further, these BRS licensees could become proponents in the transition of the 2.5 GHz band and avoid delay in initiating new service (they would be limited in initiating or expanding service in the 2.1 GHz band under other proposals put forth in this *Fifth NPRM*), and new AWS entrants in the 2.1 GHz band could focus their efforts on relocating the remaining BRS operations and their subscribers, facilitating their ability to clear the band quickly and provide new service. The NPRM proposes to undertake these license modifications pursuant to our authority under Section 316 of the Communications Act. Specifically, Section 316(a)(1), provides that ''[a]ny station license * * * may be modified by the Commission * * * if in the judgment of the Commission such

action will promote the public interest, convenience and necessity.'' In addition, under the Commission's proposal, these reassigned BRS licensees would not be entitled to ''comparable facilities'' under the relocation policy since no facilities have been constructed or are in use. Accordingly, the Commission seeks comment on this proposal. We ask that commenters consider the impact of this proposal on the 2.5 GHz transition set forth in the *BRS R&O and FNPRM*, as well as the impact on the availability of the 2.1 GHz band for new AWS entrants.

12. *Leasing.* Some BRS licensees of channels 1 and 2 currently lease their spectrum capacity to other commercial operators, and the Commission has determined that future leasing of BRS and EBS spectrum will be allowed under the Secondary Markets policy. Because leasing is prevalent in the BRS bands, the ''comparable facilities'' policy needs to address these arrangements. We recognize that leasing arrangements vary—some BRS licensees may continue to lease their spectrum to third parties when they relocate to the 2.5 GHz band, but others BRS licensees may discontinue leasing arrangements prior to relocation. In all cases, the BRS licensee retains *de jure* control of the license and is the party entitled to negotiate for ''comparable facilities'' in the relocation band. The NPRM proposes to allow incumbent BRS licensees to rely on the throughput, reliability and operating costs of facilities operated by a lessee in negotiating ''comparable facilities.'' In cases where the BRS licensees continue to lease their spectrum to third parties when they relocate to the 2.5 GHz band, the NPRM proposes that the licensee may include the lessee in negotiations but that lessees would not have a separate right of recovery—*i.e.*, the new entrant would not have to reimburse both the licensee and lessee for ''comparable facilities.'' Further, in cases where the BRS licensee discontinues leasing arrangements prior to relocation, the NPRM proposes that the lessee is not entitled to recover lost investments from the new entrant. We believe that this approach is consistent with the purpose of the ''comparable facilities'' policy to provide new facilities in the relocation band so that the public continues to receive service. The Commission seeks comment on these leasing proposals.

13. *Licensee Eligibility.* Consistent with the Commission's findings in earlier proceedings, the Commission proposes to apply the relocation policies discussed in this NPRM to BRS incumbent primary licensees who seek comparable facilities at the time of relocation. Any incumbent licensee, whose license is to be renewed before relocation, would have the right to relocation only if its license is renewed. The Commission further proposes that an assignment or transfer of control would not disqualify a BRS incumbent in the 2150–2160 MHz band from relocation eligibility so long as the facility is not rendered, as a result, more expensive to relocate. In addition, the Commission proposes that if a grandfathered BRS license (*i.e.*, authorized facilities operating with a 35-mile-radius PSA) is cancelled or forfeited, and the right to operate in that area has not automatically reverted to the BRS licensee that holds the corresponding BTA license, no new licenses would be issued for BTA service in the 2150–2160/62 MHz band. The Commission seeks comment on these eligibility proposals.

14. *Future Licensing in the 2150–2160 MHz Band.* In the *Emerging Technologies* proceeding, the Commission recognized two divergent objectives when considering the types of modifications and expansions existing licensees could make without affecting their status with respect to emerging technology licensees—on one hand, existing licensees must be allowed a certain amount of flexibility to operate without devaluing the usefulness of their facilities; on the other hand, the new entrants must be provided with a stable environment in which to plan and implement new services. The Commission decided that the best way to balance these divergent objectives was to establish procedures whereby existing licensees who chose to modify or expand their facilities after a particular date set by the Commission, would do so on a secondary basis to emerging technology licensees. Consistent with this current relocation policy and in order to provide some certainty to new AWS licensees on the scope of their relocation obligation, the NPRM proposes that major modifications to authorized facilities, as discussed in the next paragraph, made by BRS licensees after the effective date of a *Report and Order* in this proceeding will not be eligible for relocation. The NPRM further proposes that major modifications and extensions to existing BRS systems will be authorized on a secondary basis to emerging technology systems in the 2150–2160 MHz band after the effective date of the *Report and Order* in this proceeding. Moreover, all major modifications will render the modified BRS licensee secondary to emerging technology operations, unless the incumbent affirmatively justifies primary status and establishes that the modification would not add to the relocation costs of the emerging technology licensees. In addition, the NPRM proposes that BRS facilities newly authorized in the 2150–2160 MHz band after the effective date of a *Report and Order* in this proceeding would not be eligible for relocation. The Commission seeks comment on these proposals.

15. For purposes of relocation, the NPRM proposes to adopt criteria that would be the basis for determining what qualifies as a major modification for BRS licensees. Adopting major modification criteria for the purposes of relocation is necessary because BRS licensees are now licensed on a geographic area basis, and thus are allowed to place transmitters anywhere within their defined service area without prior authorization so long as the licensee's operations comply with the applicable service rules, do not affect radio-frequency zones, or require environmental review or international coordination. Specifically, the NPRM proposes to adopt criteria that, for example, would classify the additions of new transmit sites or base stations and changes to existing facilities that would increase the size or coverage of the service area or interference potential as types of modifications that are major, and thus not eligible for relocation. Traditionally, these limits have been expressed by identifying the distance by which existing transmit sites can be relocated, limiting increases in emissions, and various other means. Accordingly, the Commission seeks comment on what the criteria should be for major modifications and, in particular, the criteria in the former major modification rule for BRS licensees, codified at 47 CFR 21.23; the former rule for EBS licensees codified at 47 CFR 74.911(a)(2); or the current rule for wireless telecommunications services in § 1.929(d).

2. Negotiation Periods/Relocation Schedule

16. The NPRM generally proposes to require that negotiations for relocation of BRS operations be conducted in accordance with the Commission's *Emerging Technologies* policies, except that we propose to forego a voluntary negotiation period and instead require only a mandatory negotiation period that must expire before an emerging technology licensee could proceed to request involuntary relocation. The BRS transition plan for the new band at 2495–2690 MHz has five stages: (1) The initiation of the transition process—

when a proponent files an initiation plan for a geographic area with the Commission; (2) the transition planning period—where parties can file counterproposals and any disputes would go to arbitration; (3) the reimbursement of costs; (4) the termination of incumbent operations; and (5) the filing of post-transition notification of completion with the Commission. The approximate time needed for the BRS re-banding process at 2495–2690 MHz includes 3–3½ years for the initiation and planning stages and 1½ years for the actual relocation, for a total of approximately five years. Thus, the Commission recognizes that the new band where the BRS incumbents are to be relocated is undergoing its own transition process that may not be completed until at least 2008. In light of these considerations, the NPRM proposes to forego a voluntary negotiation period and institute ''rolling'' mandatory negotiation periods (*i.e.*, separate, individually triggered negotiation periods for each BRS licensee) of three years followed by the involuntary relocation of BRS incumbents. The NPRM proposes that the mandatory negotiation period would be triggered for each BRS licensee when an AWS licensee informs the BRS licensee in writing of its desire to negotiate. Relocation of BRS operations by AWS licensees is more likely to take place in a relatively piecemeal fashion and over an extended period of time. Consequently, it is possible that a uniform mandatory negotiation period applicable to all BRS licensees would expire by the time that many BRS licensees were approached for relocation by an AWS entrant. The Commission seeks comment on this proposal.

17. Under *Emerging Technologies* policies, the mandatory negotiation period is intended as a period of negotiation between the parties on relocation terms resulting in a contractual relocation agreement. The mandatory negotiation period ensures that an incumbent licensee will not be faced with a sudden or unexpected demand for involuntary relocation if an emerging technology provider initiates its relocation request, and provides adequate time to prepare for relocation. During mandatory negotiations, the parties are afforded flexibility in the process except that an incumbent licensee may not refuse to negotiate and all parties are required to negotiate in good faith. If no agreement is reached during negotiations, an AWS licensee may proceed to involuntary relocation of the incumbent. In such a case, the new AWS licensee must guarantee payment of all relocation expenses, and must construct, test, and deliver to the incumbent comparable replacement facilities consistent with *Emerging Technologies* procedures. The Commission notes that under *Emerging Technologies* principles, an AWS licensee would not be required to pay incumbents for internal resources devoted to the relocation process or for fees that cannot be legitimately tied to the provision of comparable facilities, because such expenses are difficult to determine and verify. The NPRM proposes to apply these negotiation/relocation principles to BRS licensees, and seeks comment on doing so. The NPRM also seeks comment on whether to apply a ''right of return'' policy to AWS/BRS relocation negotiations similar to rule 47 CFR 101.75(d) (*i.e.*, if after a 12 month trial period, the new facilities prove not to be comparable to the old facilities, the BRS licensee could return to the old frequency band or otherwise be relocated or reimbursed). The Commission asks parties to take into account the time periods for the transition occurring in the restructured 2495–2690 MHz band when providing comments on this issue.

18. *Sunset Date.* The NPRM proposes to apply the sunset rule of 47 CFR 101.79 to BRS relocation negotiations. This rule provides that new licensees are not required to pay relocation expenses after ten years following the start of the negotiation period for relocation. Consistent with the Commission's proposal to establish rolling mandatory negotiation periods, the NPRM proposes that the ten year sunset date commence from the date the first AWS license is issued in the 2150–2160 MHz band. However, because we anticipate that portions of the spectrum in the 2150–2160 MHz band will be made available for AWS auction at different times, the first AWS license could be issued in one portion of the band earlier than the first AWS license is issued in another portion of the band. We therefore seek comment on whether we should establish different sunset dates that are based on when the first AWS license is issued for each portion of the spectrum. In this case, the commencement dates and subsequent sunset dates are likely to be different for BRS channels 1 and 2/2A. Alternately, should we establish a single sunset date for the entire band? If so, we seek comment as to whether that sunset date should be ten years from the date the first AWS license is issued in whatever portion of the 2150–2160 MHz band is the last to be licensed. Further, we seek comment on when the ten year sunset date should commence if we do not adopt our proposal for rolling mandatory negotiation periods. Finally, commenters should consider that the sunset date proposal we ultimately adopt would apply apart from the restructuring of the 2495–2690 MHz band.

19. *Good Faith Requirement.* Finally, the Commission expects the parties involved in the replacement or retuning of BRS equipment to negotiate in good faith, that is, each party would be required to provide information to the other that is reasonably necessary to facilitate the relocation process. The NPRM therefore proposes to apply the good faith guidelines of 47 CFR 101.73 to BRS negotiations, and seeks comment on this proposal.

3. Interference Issues/Technical Standards

20. The Commission currently provides for the protection of fixed microwave services operating in the 1.9 GHz and 2.1 GHz bands through the provisions of 24.237 of our rules. Under 24.237, PCS licensees operating in the 1850–1990 MHz band and AWS licensees operating in the 2110–2155 MHz band must, prior to commencing operations, perform certain engineering analyses to ensure that their proposed operations do not cause interference to incumbent fixed microwave services. Part of that analyses calls for the use of TIA Telecommunications Systems Bulletin (TSB) 10–F, or its successor standard, to determine when proposed PCS or AWS operations might cause interference to existing fixed microwave stations.

21. The Commission seeks to develop rules that will enable AWS licensees to determine when their proposed operations would cause interference to incumbent BRS systems operating in the 2150–2160 MHz band, such that the relocation of those systems would be necessary before AWS operations could begin. The NPRM therefore seeks comment on whether a rule comparable to § 24.237 should be developed for this purpose. If so, we seek comment as to what procedures and mechanisms should be contained in such a rule (*e.g.*, a ''distance'' table, such as Table 2 in § 24.237, which identifies the distance from an AWS station within which a BRS station must be protected; the use of TIA TSB 10–F, or some comparable document, to determine when interference is expected to occur to BRS stations, *etc.*). Commenters favoring this approach should provide information that would lead to the development of

a distance table applicable to BRS operations; and commenters should also indicate whether and how TIA TSB 10–F could be used to determine the potential for interference to BRS systems. Commenters not favoring the use of a § 24.237 type rule should indicate what procedures the Commission should adopt to enable AWS licensees to determine when their operations will cause interference to incumbent BRS systems.

B. Relocation of FS in the 2160–2175 MHz Band

22. In the *Emerging Technologies* proceeding, the Commission established procedures for the relocation of incumbent operations by new technology licensees in several frequency bands, including the paired bands at 2110–2150 MHz and 2160–2200 MHz. Later, in the *Microwave Cost Sharing* proceeding, the Commission further addressed incumbent relocations by new technology licensees. Together, these proceedings provided for, among other matters, relocation procedures that included both voluntary and mandatory negotiations, as well as relocation sunset periods, as delineated in 47 CFR part 101.

23. In 2000, in the *MSS Second R&O* in ET Docket No. 95–18, the Commission adopted ''modified'' *Emerging Technologies* relocation procedures for FS incumbents in the 2165–2200 MHz band that would be relocated by new MSS licensees in that band. Under these ''modified'' procedures, the Commission eliminated the voluntary negotiation period for relocation of FS incumbents by MSS in the 2165–2200 MHz band and provided instead a single mandatory negotiation period applying to all FS incumbents. This single mandatory negotiation period would be triggered when the first MSS licensee informs, in writing, the first FS incumbent of its desire to negotiate. Furthermore, consistent with its findings in the earlier *Microwave Cost Sharing* proceeding, the Commission established that the FS relocation rules would sunset ten years after the negotiations begin for the first FS licensee.

24. In the *AWS Second R&O* in ET Docket No. 00–258, the Commission addressed the relocation procedures that would apply to the relocation of incumbent FS licensees by new AWS entrants in the paired 2110–2150 MHz band. The Commission concluded that ''the modified [MSS] relocation procedures [for the 2165–2200 MHz band] * * * represent[ed] the best course.'' The Commission reasoned, ''[a] unified approach to our rules and procedures serves the public interest, and can promote the rapid development of AWS, which many commenters support.''

25. In the *AWS Third R&O*, also in ET Docket No. 00–258, the Commission reallocated the 1990–2000/2020–2025 MHz and 2165–2180 MHz bands for Fixed and Mobile services to support AWS. Subsequently in the *AWS Sixth R&O* in ET Docket No. 00–258, the Commission concluded that, given its earlier decision in the *AWS Second R&O* to apply the ''modified'' relocation procedures to AWS relocation of FS in the 2110–2150 MHz band, it would be appropriate to apply the same procedures to the relocation of FS by AWS licensees in the 2175–2180 MHz paired band.

26. In proposing relocation procedures for incumbent FS operations in the 2160–2175 MHz band, the Commission continues to believe that it is desirable to harmonize the FS relocation procedures among the various AWS designated bands to the greatest extent feasible. As the Commission observed in the *AWS Sixth R&O*, 69 FR 62615, October 27, 2004, relocation procedures that are consistent can be expected to foster a more efficient rollout of AWS and minimize confusion among the parties, and thereby serve the public interest.

27. Under the existing ''modified'' *Emerging Technologies* relocation procedures described, there is a single mandatory negotiation period that commences when the first new technology entrant informs the first FS licensee, in writing, of its desire to negotiate. A ten-year sunset period is triggered when the mandatory negotiation period begins. The NPRM seeks comment on whether the Commission should apply these same procedures to FS relocation by AWS in the 2160–2175 MHz band. As noted, this would be consistent with the procedures adopted in the *AWS Second R&O*, 68 FR 3455, January 24, 2003, and *AWS Sixth R&O*, 69 FR 62615, October 27, 2004, for the paired bands 2110–2150 MHz and 2175–2180 MHz, respectively.

28. The NPRM also proposes to clarify that under the single mandatory negotiation periods approach the ten-year sunset would supersede, and thereby terminate, any remaining mandatory negotiation period that had not yet run its course. The NPRM proposes that this ten-year sunset period for the 2160–2175 MHz band should commence with the date the first AWS license is issued in that band. We seek comment on this proposal, particularly whether this trigger event represents the most appropriate date for starting the ten-year sunset period. Because we have not yet determined how we will make this spectrum available for assignment, it is possible that different portions of the band may be licensed at different times. We therefore seek comment as to whether we should establish different sunset periods for FS incumbents in different frequency blocks within the band, based on the date the first AWS license is issued for each subset of the band. We recognize that, in this case, the commencement date and subsequent sunset date may not be uniform across the whole band. We also seek comment on whether we should instead set a uniform sunset date for the entire band and, if so, what trigger date we would use to determine that sunset date.

29. The Commission also seeks comment on an alternative approach. Relocation of FS operations by AWS licensees is more likely to take place in a relatively piecemeal fashion and over an extended period of time. Consequently, it is possible that a single mandatory negotiation period afforded under the existing relocation procedures would expire before the time that many FS licensees were approached for relocation by an AWS entrant. Therefore, we also seek comment on whether each FS incumbent in the 2160–2175 MHz band should be afforded a separate, individually triggered, negotiation period—as contrasted with the across-the-board uniform period for all incumbents under the existing relocation rules. Under this alternative proposal, a mandatory negotiation period would be triggered by an event specific to each FS licensee, which we propose would be when an AWS licensee informs the FS licensee in writing of its desire to negotiate. This would result in a series of independent, or ''rolling,'' negotiation periods, each having its own time frame. One potential benefit of the rolling negotiation period approach is that it could afford a greater opportunity for FS incumbents and AWS licensees to engage in relocation negotiations and could foster a more equitable and expeditious transition to AWS in the band. On the other hand, this approach could result in more complex negotiation timetables. We seek comment on this alternative proposal.

30. *Other Bands.* If we were to adopt the alternative rolling negotiation period approach described for the 2160–2175 MHz band, the Commission seeks comment on whether the same approach should be adopted for corresponding paired segments of the 2110–2150 MHz band. In a similar fashion, if we were to adopt the rolling negotiation approach

for these two bands, we seek comment on whether the relocation procedures adopted for the 2175–2180 MHz band in the *AWS Sixth R&O* should also be changed to afford rolling FS negotiation periods, resulting in a unified rolling negotiation period approach across these bands. We also seek comment on whether the modified sunset rules discussed above should apply in these other bands as well. Finally, we seek comment on whether the relocation/sunset procedures described here would harmonize well with the procedures for other *Emerging Technologies* bands that have been addressed elsewhere in this and other proceedings.

31. *Incumbent Part 22 Services.* The Commission also seeks comment on whether and how to harmonize the *Emerging Technologies* relocation rules for part 22 point-to-point microwave links and part 101 fixed services. When the *Emerging Technologies* relocation rules were first adopted, fixed microwave services in the spectrum were regulated under parts 21, 22, and 94, dealing with Common Carrier fixed point-to-point, fixed services supporting Paging and Radiotelephone, and Private Operational point-to-point, respectively. To address relocation of all of these fixed services, the Commission established separate but identical relocation rules in each Part. In 1996, the Commission merged the rules regulating Common Carrier and Private Operational services in part 101 but left fixed services supporting Paging and Radiotelephone, along with the rules for relocating these links, in part 22.

32. Although initially identical, the *Emerging Technologies* relocation rules in part 22 and in part 101 subsequently diverged. When the Commission determined that FS incumbents in the 2.1 GHz band would be subject to modified relocation procedures, these modifications were reflected in the part 101 relocation rules but inadvertently not included in the part 22 rules, although part 22 point-to-point services also operated in the 2.1 GHz spectrum. Thus, at that point, AWS entrants in the 2.1 GHz band would be required to follow the original *Emerging Technologies* rules to relocate part 22 links, but would use the modified rules to relocate part 101 links.

33. The rules applicable to part 22 and part 101 links further diverged recently, when the Commission determined that it would not renew the part 22 point-to-point licenses in the 2110–2130 and 2160–2180 MHz bands, but instead allow all current part 22 fixed service licenses in these bands to expire at the end of their current term. Commission records indicate that there are 53 active part 22 fixed licenses in these two bands, and that all will have expired by January 3, 2010. Thus, all part 22 fixed services will cease operations in the 2.1 GHz band by 2010. In contrast, part 101 FS licensees in the *Emerging Technologies* spectrum are not currently prohibited from renewing their licenses.

34. The NPRM does not propose to permit renewal of part 22 fixed service licenses in the 2.1 GHz band. The NPRM does seek comment, however, on whether the relocation rules that apply to AWS relocation of part 101 fixed services should otherwise apply to AWS relocation of part 22 services as well.

C. Cost Sharing

35. The Commission's *Emerging Technologies* relocation policies require new licensees who benefit from the clearing of the spectrum of incumbent operations by an earlier entrant to reimburse that entrant for reasonable costs incurred in clearing the spectrum. The Commission has found that adopting cost sharing rules in these circumstances serves the public interest because it (1) distributes relocation costs more equitably among the beneficiaries of the relocation; (2) encourages the simultaneous relocation of multi-link communications systems; and (3) accelerates the relocation process, promoting more rapid deployment of new services. In this section, we discuss cost sharing among new licensees when they relocate incumbent FS operations in the 2110–2150 and 2160–2200 MHz bands and when they relocate BRS operations in the 2150–2160/62 MHz band.

36. *Relocation of Incumbent FS Licensees.* The part 101 relocation rules address, *inter alia,* the cost sharing obligation imposed on new licensees when they relocate FS incumbents in the 2110–2150 MHz and 2160–2200 MHz bands, which currently are used by FS licensees mostly as paired links in the lower and upper bands. Section 101.82 provides that when a new licensee in either of these bands relocates an incumbent paired FS link with one path in one band and the paired path in the other band, the new licensee is entitled to reimbursement of fifty percent of its relocation costs from any subsequently entering new licensee which would have been required to relocate the same FS link, subject to a monetary ''cap.'' We also note that this rule applies to both new AWS licensees in the 2110–2150 MHz and 2160–2180 MHz bands as well as to MSS licensees in the 2180–2200 MHz band, which are discussed separately below.

37. In the *AWS–2 Service Rules NPRM,* the Commission recognized that a single FS path in these bands could cross multiple AWS license areas, and thus multiple AWS licensees could benefit by the relocation of a single FS link. The Commission thus sought comment on whether it should adopt formal procedures for apportioning relocation costs among multiple AWS licensees in the 2110–2150 MHz and 2175–2180 MHz bands, and in particular, whether it should apply the cost sharing rules in part 24 that were used by new PCS licensees when they relocated incumbent FS links in the 1850–1990 MHz band. In this NPRM, the Commission seeks comment on whether we should adopt formal procedures for apportioning relocation costs among multiple AWS licensees in the 2160–2175 MHz band and in particular, whether we should apply the cost sharing rules in part 24. We also seek comment on whether AWS licensees in the 2160–2175 MHz band should be subject to the same cost sharing regime that we adopt for relocation of FS incumbents in the 2110–2150 MHz and 2175–2180 MHz bands.

38. Under the part 24 cost sharing plan, new licensees that incur costs relocating an FS link are eligible to receive reimbursement from subsequent new entrants that also benefited from that relocation. Reimbursement claims are submitted to one of the private non-profit clearinghouses designated by the Wireless Telecommunications Bureau to administer the plan. All new entrants are required to file a prior coordination NPRM with these clearinghouses before beginning operations. Upon receiving such a NPRM, a clearinghouse with a reimbursement claim on file identifies whether the new entrant has benefited from the relevant relocation using a Proximity Threshold Test. This test limits the beneficiaries to those entrants turning on a base station that both operates in the same spectrum that the incumbent link did prior to relocation and is within a specified geographic distance of the link. Having identified a new entrant as a beneficiary, the clearinghouse then determines the amount of the beneficiary's repayment obligation using a rule-specified cost sharing formula. This amount is subject to a cap of $250,000 per relocated link, plus $150,000 if a new or modified tower is required. Once the beneficiary is notified of the amount, it is then responsible for paying reimbursement within 30 days, with an equal share of the total going to each entrant that has previously contributed to the relocation.

FS incumbents that self-relocate are also permitted to obtain reimbursement from benefiting AWS entrants under the plan, subject to the same cap described above. Any disputes over cost sharing obligations under the rules are addressed in the first instance by a clearinghouse, and if still unresolved, by alternatives such as binding arbitration. All of these payment obligations are imposed as a default, and new licensees are permitted to enter into private cost sharing arrangements with each other that supercede the cost sharing plan as it applies to reimbursement between those licensees.

39. The Commission believes that adopting the part 24 cost sharing plan for new AWS licensees that relocate FS incumbents would have many benefits. First, the part 24 plan was devised to accommodate new cellular type systems licensed by geographic areas and incumbent FS point-to-point operations, which are essentially the same circumstances at issue here, and the part 24 plan has a proven record of success. In 2000, the Commission reviewed the operation of the part 24 cost sharing rules and concluded that ''[t]hey generally have served to promote an efficient and equitable relocation process * * *.'' In addition, since the plan went into operation in 1996, the Commission has resolved numerous questions regarding the details of the plan's operation and application. We therefore expect that there will be less need for clarification if we adopt this regime for AWS. For these reasons, we anticipate that adopting these rules will expedite the relocation of FS incumbents and the introduction of new services. The NPRM therefore proposes to adopt a cost sharing plan for relocation of FS incumbents in the 2160–2175 MHz band based on the part 24 plan and seek comment on this proposal.

40. While the part 24 rules could be applied to the relocation of FS incumbents in the 2160–2175 MHz band without substantial changes, the Commission seeks comment on whether some modifications are nevertheless appropriate. For example, PCIA has suggested in response to the *AWS–2 Service Rules NPRM* that, in establishing a cost sharing plan for AWS relocation of FS, we should modify the part 24 plan by (1) establishing a rule requiring licensing data to be filed by all entities; (2) mandating that parties are required to act in good faith in connection with their responsibilities under the cost sharing plan; (3) providing that reasonable interest charges can be applied to cost sharing obligations; (4) creating an explicit mechanism for expedited appeal to the Commission from a disputed clearinghouse determination; and (5) giving weight to the determinations of the clearinghouse in such an appeal. We seek comment on these suggested changes to the part 24 plan.

41. The part 24 plan delegates authority to the Wireless Telecommunications Bureau to assign the administration of the cost sharing rules to one or more private non-profit clearinghouses. Management of the part 24 cost sharing rules by third-party clearinghouses has been highly successful, and two entities have already expressed interest in accepting this responsibility for AWS relocation of FS in the 2110–2150 MHz and 2175–2180 MHz bands. We seek comment on the rules that should govern such a clearinghouse and the procedures and quality criteria we should use to select a clearinghouse administrator.

42. As noted, MSS is allocated to the 2180–2200 MHz band. FS links in this band are paired with FS links in the 2130–2150 MHz band which is designated for AWS. Cost sharing between MSS and AWS licensees in these paired bands is governed by § 101.82, which provides that when a new licensee in either of these bands relocates an incumbent paired FS link with one path in one band and the paired path in the other band, the new licensee is entitled to reimbursement of fifty percent of its relocation costs (*i.e.*, the total cost of relocating both paths) from any subsequently entering new licensee which would have been required to relocate the same FS link, subject to a monetary ''cap.'' The Commission adopted relocation rules for MSS that recognize the unique characteristics of a satellite service. For example, unlike a new terrestrial entrant such as AWS that can clear the band on a link-by-link basis, MSS must clear all incumbent FS operations in the 2180–2200 MHz band within the satellite service area if interference will occur. Thus, the relocation obligations and cost sharing among MSS new entrants in the 2180–2200 MHz is relatively straightforward and can function without a clearinghouse or formal cost sharing procedures. Section 101.82 establishes a sharing obligation between MSS and AWS that is reasonable and relatively easy to implement, and because it does not depreciate cost sharing obligations, it provides MSS licensees with additional assurance of cost recovery. In addition to this consideration, we also do not wish to change the relocation and cost sharing rules applicable to MSS, because MSS licensees are currently in the midst of the implementation and relocation process. Subsequently, the *AWS–2 Service Rules NPRM* has sought comment on how the AWS sharing obligation (*i.e.*, fifty percent for relocating the link) should be apportioned among multiple AWS licensees. In this NPRM, the Commission seeks comment on whether MSS entrants entitled to reimbursement under § 101.82 should submit their reimbursement claims to an AWS clearinghouse, including any procedures we may adopt for filing such claims. The Commission believes that this approach would relieve MSS licensees of the burden of identifying the AWS licensees who would be obligated to pay relocation costs. We seek comment on this proposal.

43. *Relocation of Incumbent BRS Licensees.* The NPRM proposes to require AWS entrants to relocate BRS operations in the 2150–2160/62 MHz band on a link-by-link basis, based on interference potential. We also note certain instances where it may be necessary for the AWS licensee to relocate more BRS facilities than an interference analysis conducted on a link-by-link basis might indicate as technically necessary, in order to provide relocating incumbents with comparable facilities—*e.g.*, where an AWS licensee may be required to relocate BRS operations outside its own service area or where BRS incumbents operate on combinations of BRS channels 1 and 2/2A. Thus, a subsequent AWS licensee who operates co-channel in an adjacent geographic area or who operates on a different frequency than the relocator would benefit from the relocation of certain BRS operations. The relocation of a single BRS link could also have more than one AWS beneficiary if the BRS link uses spectrum that overlaps more than one AWS license block. Consequently, the Commission seeks comment on whether we should establish cost sharing obligations for AWS licensees who benefit from an earlier AWS licensee's relocation of BRS incumbents in the 2150–2160/62 MHz band. For example, we seek comment on whether cost sharing obligations should be imposed on new licensees that receive interference but do not cause it, as is done with the PCS rules, or only on those licensees that cause interference, as is the case for both the current *Emerging Technologies* and MSS rules in part 101.

44. The Commission also seeks comment on what, if any, specific cost sharing obligations are necessary or appropriate, including how costs should be apportioned among AWS licensees.

Although we noted that the part 24 plan could be applied to FS relocation without substantial changes, we believe that this is not the case for BRS operations which are significantly different than point-to-point FS operations. BRS operations are primarily point-to-multipoint, based either on a contour around a fixed transmitter with protected receive sites within the contour or on a wide geographic area with multiple base and receive sites located anywhere within the licensed area. We thus seek comment on what criteria could be used to identify whether a subsequent AWS licensee has an obligation to share the cost of relocating a BRS incumbent and how the reimbursement obligation should be apportioned among AWS licensees. Commenters should consider, for example, whether we should require each AWS licensee to bear this financial responsibility in proportion to the amount of spectrum in the 2150–2160/62 MHz band for which it is licensed, or in proportion to the amount of geographic area cleared within its licensed market, or some other metric, such as MHz/pops. We also seek comment on whether we should apply a ''cap'' or some other limit on the amount a relocator is entitled to receive as reimbursement in order to protect later entrants who did not participate in negotiations; we also seek comment on what the amount of the ''cap'' should be. Moreover, we seek comment on whether formal cost sharing procedures, such as those in the part 24 plan, are necessary or appropriate to implement any cost sharing obligations we may ultimately adopt, and if so, what procedures we should adopt. Finally, we seek comment on whether we should designate a clearinghouse party to administer any cost sharing rules we may adopt, the rules that should govern a clearinghouse and the procedure and quality criteria we should use to select a clearinghouse administrator.

Initial Regulatory Flexibility Analysis

45. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Fifth NPRM of Proposed Rule Making* (*Fifth NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Fifth NPRM.* The Commission will send a copy of this *Fifth NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the Fifth NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.[3]

A. Need for, and Objectives of, the Proposed Rules

46. The *Fifth NPRM* proposes relocation procedures to govern the relocation of: (1) Broadband Radio Service (BRS)[4] licensees in the 2150–2160/62 MHz band; and (2) Fixed Microwave Service (FS) licensees in the 2160–2175 MHz band. The proposed relocation procedures generally follow the Commission's relocation policies delineated in the *Emerging Technologies* proceeding, and as modified by subsequent decisions.[5] These relocation policies are designed to allow early entry for new technology providers by allowing providers of new services to negotiate financial arrangements for reaccommodation of incumbent licensees, and have been tailored to set forth specific relocation schemes appropriate for a variety of different new entrants, including Personal Communications Service (PCS) licensees, Mobile Satellite Service (MSS) licensees, 18 GHz Fixed Satellite Service (FSS) licensees, and Nextel. While these new entrants occupy different frequency bands, each entrant has had to relocate incumbent operations. The relocation procedures we propose in the *Fifth NPRM* are designed to ensure an orderly and expeditious transition of, with minimal disruption to, incumbent BRS and FS operations from the 2150–2160/62 MHz and 2160–2175 MHz bands, respectively, in order to allow early entry for new AWS licensees into these bands.

47. The *Fifth NPRM* seeks comment on what specific relocation procedures are best suited for the incumbent BRS operators in the 2150–2160/62 MHz band. For example, we propose a mandatory negotiation period that must expire before an emerging technology licensee could proceed to request involuntary relocation and, due to the nature of BRS, ask whether we should establish separate, individually triggered negotiation periods for each BRS licensee. We also seek to develop rules that will enable AWS licensees to determine when their proposed operations would cause interference to incumbent BRS systems operating in the 2150–2160 MHz band, such that the relocation of those systems would be necessary before AWS operations could begin. We identified a number of options for setting forth these technical requirements, including implementation of a ''distance'' table that identifies the distance from an AWS station within which a BRS station must be protected, and the use of the TIA TSB 10–F standard to determine when interference is expected to occur to BRS stations. The *Fifth NPRM* similarly seeks comment on specific relocation procedures for incumbent FS operations in the 2160–2175 MHz band, including options for modifying sunset periods to accommodate new AWS entrants in the band. The *Fifth NPRM* recognizes that we have traditionally provided for cost sharing among multiple new entrants that benefit from the relocation of incumbent licensees, and seeks comment on what cost sharing responsibilities should be implemented between the first AWS entrant and other subsequent AWS entrants in the 2150–2160/62 MHz and the 2160–2175 MHz bands. We note that in the *Emerging Technologies* and *Microwave Cost Sharing* proceedings, the Commission established procedures for relocating incumbent operations by new technology licensees in the 2160–2200 MHz band whereby the new licensees that relocate a paired microwave link with one path in the 2110–2150 MHz portion of the band and the other paired path in the 2160–2200 MHz portion of

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. 603(a).

[3] *Id.*

[4] The Multipoint Distribution Service (MDS) was renamed the Broadband Radio Service (BRS). *See* Amendment of parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 MHz Band, WT Docket No. 03–66, *Report and Order and Further NPRM of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004), 69 FR 72020 and 69 FR 72048, December 10, 2004.

[5] *See* Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92–9, *First Report and Order and Third NPRM of Proposed Rule Making*, 7 FCC Rcd 6886 (1992); *Second Report and Order*, 8 FCC Rcd 6495 (1993); *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993); *Memorandum Opinion and Order*, 9 FCC Rcd 1943 (1994); *Second Memorandum Opinion and Order*, 9 FCC Rcd 7797 (1994); *aff'd Association of Public Safety Communications Officials-International, Inc.* v. *FCC*, 76 F.3d 395 (D.C. Cir. 1996) (collectively, ''*Emerging Technologies* proceeding''). *See also Teledesic, LLC* v. *FCC*, 275 F.3d 75 (D.C. Cir. 2001) (affirming modified relocation scheme for new satellite entrants to the 17.7–19.7 GHz band). See also Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95–157, *First Report and Order and Further NPRM of Proposed Rule Making*, 11 FCC Rcd 8825 (1996); *Second Report and Order*, 12 FCC Rcd 2705 (1997) (collectively, *Microwave Cost Sharing* proceeding).

the band are entitled to reimbursement for a portion of their relocation expenses. Because these procedures encompass the 2160–2175 MHz band discussed in the *Fifth NPRM*, we seek comment on the appropriate application of cost sharing requirements. One option is to establish new cost sharing procedures for the band that are based on our existing part 24 cost sharing rules that were used for PCS relocation, while at the same time retaining and integrating the existing cost sharing requirement in part 101.

48. After evaluating comments filed in response to the *Fifth NPRM*, the Commission will examine further the impact of all rule changes on small entities and set forth its findings in the Final Regulatory Flexibility Analysis.

B. Legal Basis

49. The proposed action is authorized under sections 1, 4(i), 7(a), 301, 303(f), 303(g), 303(r), 307, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 301, 303(f), 303(g), 303(r), 307, 316, and 332.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

50. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[6] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [7] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[8] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[9]

51. *Broadband Radio Service.* The Broadband Radio Service (BRS) consists of Multichannel Multipoint Distribution Service (MMDS) systems, which were originally licensed to transmit video programming to subscribers using the microwave frequencies of Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[10] In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA has approved of this standard.[11] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[12] Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.[13]

52. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution,[14] which includes all such companies generating $12.5 million or less in annual receipts.[15] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category that had operated for the entire year.[16] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million.[17] Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies. Because the Commission's proposals only affect BRS operations in the 2155–2160/62 MHz band, the actual number of BRS providers who will be affected by the proposed relocation procedures will only represent a small fraction of these small businesses.

53. *Fixed Microwave Services.* Microwave services include common carrier,[18] private-operational fixed,[19] and broadcast auxiliary radio services.[20] At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of the FRFA, we will use the SBA's definition applicable to Cellular and other Wireless Telecommunications companies—*i.e.*, an entity with no more than 1,500 persons.[21] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[22] Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more.[23] Thus, under this size standard, majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We

[6] 5 U.S.C. 603(b)(3).

[7] 5 U.S.C. 601(6).

[8] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[9] Small Business Act, 15 U.S.C. 632 (1996).

[10] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Report and Order*, 10 FCC Rcd 9589, 9593, paragraph 7 (1995) (''*MDS Auction R&O*'').

[11] See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration (dated Mar. 20, 2003) (noting approval of $40 million size standard for MDS auction).

[12] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See* MDS Auction R&O, 10 FCC Rcd at 9608, paragraph 34.

[13] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for ''other telecommunications'' (annual receipts of $12.5 million or less). *See* 13 CFR 121.201, NAICS code 517910.

[14] 13 CFR 121.201, NAICS code 517510.

[15] *Id.*

[16] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4 (issued October 2000).

[17] *Id.*

[18] 47 CFR part 101 *et seq.* (formerly, part 21 of the Commission's Rules) for common carrier fixed microwave services (except MDS).

[19] Persons eligible under Parts 80 and 90 of the Commission's rules can use Private-Operational Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[20] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[21] 13 CFR 121.201, NAICS code 517212.

[22] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5 (issued Oct. 2000).

[23] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

54. The *Fifth NPRM* seeks comment on proposals for relocation procedures applicable to BRS licensees in the 2150–2160/62 MHz band FS licensees in the 2160–2175 MHz band, but does not propose service rules. Thus, the item contains no new reporting, recordkeeping, or other compliance requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

55. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[24]

56. The proposals contained in the *Fifth NPRM* are designed to provide spectrum to support the introduction of new advanced mobile and fixed terrestrial wireless services. This action is critical to the continuation of technological advancement, furthers the goals of the Telecommunications Act of 1996, and serves the public interest. We are likewise committed to ensuring that the disruption to incumbent operations and the economic impact of this proceeding on incumbent licensees is minimal. As discussed in Section A, *supra*, we have proposed to establish rules based on our existing *Emerging Technologies* relocation procedures to govern the entry of new licensees into the 2150–2160/62 MHz and 2160–2175 MHz bands. An alternative option would be to offer no relocation process, and instead require incumbent licensees to cease use of the band by a date certain and prohibit new licensees from entering the band until that date. We believe that an *Emerging Technologies*-based relocation procedure is preferable, as it draws on established and well known principles (such as time-based negotiation periods and the requirement of negotiating in good faith), benefits small BRS and FS licensees because the proposals would require new AWS licensees to pay for the costs to relocate their incumbent operations to comparable facilities, and—for small AWS licensees—offers a process by which new services can be brought to the market expeditiously. Moreover, we believe that the provision of additional spectrum that can be used to support AWS will directly benefit small business entities by providing new opportunities for the provision of innovative new fixed and mobile wireless services.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

57. None.

Ordering Clauses

58. Pursuant to Sections 1, 4(i), 7(a), 301, 303(f), 303(g), 303(r), 307, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 301, 303(f), 303(g), 303(r), 307, 316, and 332, this Fifth NPRM of proposed rule making *is adopted.*

59. Notice *is hereby given* of the proposed regulatory changes described in this Fifth NPRM of proposed rule making, and that comment is sought on these proposals.

60. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Eighth Report and Order and Fifth NPRM of proposed rule making, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch.

Secretary.

[FR Doc. 05–21407 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–P

[24] *See* 5 U.S.C. 603(c).

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 173 and 180

[Docket No. PHMSA–03–14405 (HM–220F)]

RIN 2137–AD78

Hazardous Materials Regulations: Aluminum Cylinders Manufactured of Aluminum Alloy 6351–T6 Used in SCUBA, SCBA, Carbon Dioxide, and Oxygen Service—Revised Requalification and Use Criteria

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On September 10, 2003, the Research and Special Programs Administration—the predecessor agency to the Pipeline and Hazardous Materials Safety Administration published a notice of proposed rulemaking (NPRM) to propose an inspection and testing program for early detection of sustained load cracking in certain cylinders manufactured with aluminum alloy 6351–T6. Based on comments received in response to that NPRM, we are proposing to adopt a maximum service life for cylinders manufactured with aluminum alloy 6351–T6 and to prohibit the use of these cylinders after the expiration of their maximum service life.

DATES: Comments must be received by December 27, 2005.

ADDRESSES: You may submit comments to Docket No. PHMSA–03–14405 (HM–220F) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *DOT Web site: http://dms.dot.gov.* To submit comments on the DOT electronic docket site, click ''Comment/Submissions,'' click ''Continue,'' fill in the requested information, click ''Continue,'' enter your comment, then click ''Submit.''
- *Fax:* 202–493–2251.
- *Mail:* Docket Management System; U. S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Docket Management System; 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.

Instructions: You must include the agency name and docket number PHMSA–03–14405 (HM–220F) or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that we received your comments, you must include a self-addressed stamped post card. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act section of this document.

FOR FURTHER INFORMATION CONTACT: Mark Toughiry, Office of Hazardous Materials Technology, (202) 366–4545, or Kurt C. Eichenlaub, Office of Hazardous Materials Standards, (202) 366–8553; PHMSA, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Contents

I. Background
II. Previously Published NPRM
III. Analysis of Comments
IV. Proposals in This SNPRM
V. Section-By-Section Review
VI. Regulatory Analyses and Notices
A. Statutory/Legal Authority for This Rulemaking
B. Executive Order 12866 and DOT Regulatory Polices and Procedures
C. Executive Order 13132
D. Executive Order 13175
E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies
F. Paperwork Reduction Act
G. Regulation Identifier Number (RIN)
H. Unfunded Mandates Reform Act
I. Environmental Assessment
J. Privacy Act
List of Subjects

I. Background

Cylinders made of aluminum alloy 6351–T6 are known to be susceptible to sustained load cracking (SLC) in the neck and shoulder area of the cylinder. The majority of SLC-related ruptures have occurred in self-contained underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), and oxygen services. Since 1994, the Pipeline and Hazardous Materials Safety Administration (PHMSA, we) has been notified of thirteen suspected SLC ruptures of cylinders manufactured of aluminum alloy 6351–T6. Five of the thirteen ruptures resulted in serious injuries. Data from manufacturers show there are thousands of cylinders with small, non-leaking cracks, that are regularly detected during a diligent, proper requalification process. Manufacturers of cylinders made from the 6351–T6 aluminum alloy have performed research, testing and analysis to determine whether there is any correlation between SLC and the probability of a cylinder rupture. The data indicated the cylinders would leak but not rupture when operated at marked service pressure. It was also found the probability of cracking increases with an increase in stress levels. We performed additional metallurgical analysis on several ruptured cylinders to verify the cause of failure and failure mode. (See the metallurgical analysis reports at *http://hazmat.dot.gov/pubs/reports/cylinder/3al_cyls_info.htm*). Those metallurgical analyses revealed SLC caused the cylinder ruptures, but the results were inconclusive as to why the cylinders abruptly ruptured instead of developing leaks. United States manufacturers discontinued using aluminum alloy 6351–T6 in the mid-1990s, replacing it with aluminum alloy 6061–T6, which is not susceptible to SLC. Cylinders manufactured of aluminum alloy 6351–T6 prior to July 1990 include seamless aluminum cylinders marked ''DOT 3AL'', including those marked with ''DOT 3AL'' above or near one of the following exemption or special permit numbers: 6498, 7042, 8107, 8364, and 8422. We estimate approximately six million U.S. cylinders manufactured from aluminum alloy 6351–T6 are currently in use in SCUBA, SCBA, Carbon Dioxide (CO_2), and oxygen services.

The primary domestic manufacturers of DOT 3AL cylinders currently in service are Luxfer USA; Walter Kidde Co.; Cliff Impact Division of Parker Hannifin Corporation; and Catalina Cylinders. The majority of the cylinders are being used in six major services: (1) SCUBA, (2) SCBA, (3) CO_2, (4) oxygen, (5) industrial gases, and (6) fire extinguishers.

On August 8, 2002, we published a final rule (Docket HM–220D, 67 FR 51626) amending the requirements of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) applicable to the maintenance, requalification, repair, and use of DOT specification cylinders. On May 8, 2003, we issued a subsequent final rule (68 FR 24653) that made further revisions in response to appeals. In the final rule and the response to appeals, we added the following amendments pertaining to DOT specification cylinders made with aluminum alloy 6351–T6:

- Removed the authorization for the manufacture of DOT specification cylinders from aluminum alloy 6351–T6 because cylinders manufactured with this aluminum alloy have a greater risk of failure than other aluminum cylinders.
- Prohibited these cylinders for Hazard Zone A materials effective on October 1, 2002. After that date, cylinders made of aluminum alloy 6351–T6 may not be filled and offered for transportation in toxic inhalation hazard service.
- Prohibited the use of cylinders manufactured of aluminum alloy 6351–T6 for gases having pyrophoric properties.
- Required a visual inspection of DOT specification or exemption cylinders made of aluminum alloy 6351–T6 for evidence of SLC in the neck and shoulder area.

The HMR require DOT 3AL cylinders to be requalified every five years (twelve years for fire extinguishers) in accordance with § 180.205. The requalification performed under § 180.205 includes a visual inspection (internal and external) and a volumetric expansion test. During the visual inspection, cylinders must be inspected for evidence of SLC in the neck and shoulder area. However, we understand that in addition to the visual inspection and volumetric expansion test, many users and requalifiers are currently performing an eddy current examination. Approximately 2,000 eddy current devices have been purchased by various technicians in the dive, fire and cylinder requalification industries to examine aluminum cylinders for SLC. Cylinder manufacturers report that a large number of affected cylinders have been removed from service because of flaws discovered during eddy current examinations.

II. Previously Published NPRM

On September 10, 2003, the Research and Special Programs Administration, the predecessor agency to the PHMSA, published an NPRM proposing to amend HMR requirements on aluminum cylinders manufactured using aluminum alloy 6351–T6. The NPRM proposed a standard for early detection of SLC to reduce the risk of a cylinder rupture.

We evaluated the following three non-destructive examination (NDE) techniques—internal visual examination (VE), eddy current examination (EE), and ultrasonic examination (UE)—to detect a critical-size crack. A cylinder with a critical-size crack would be removed from service. Under the direction of PHMSA, Texas Research Institute (TRI) evaluated these three NDE (VE, EE, UE) methods by performing blind examinations applied

by individuals of varying skill levels (See the Nondestructive Inspection of High Pressure Aluminum Gas Cylinder, Final Report, dated September 2000, at *http://hazmat.dot.gov/enforce/forms/ohmforms.htm*). TRI determined that each NDE method was capable of detecting SLC, but detection using VE was limited by external factors, such as the inspector's eye sight, lighting, position of the crack, and alertness of the examiner. TRI also determined that UE must be applied by a certified technician to produce accurate results in detecting SLC. TRI concluded EE combined with a VE provides the most accurate and practical examination for detecting SLC. Both EE and VE can be conducted by a requalifier with minimal training.

In the NPRM, for cylinders manufactured of aluminum alloy 6351–T6 used in SCUBA (diving), SCBA (firefighting), and oxygen service, we proposed the following amendments:

- Require cylinders to undergo a combined visual and eddy current examination.
- Add a new Appendix C to Part 180, to specify the procedure to conduct the eddy current examination.
- That suitable safeguards be provided to protect personnel and facilities should a cylinder fail during the filling process.
- That only individuals essential to the filling process be allowed in the vicinity of the cylinder during the filling process.

Although we believe the thirteen reported SLC ruptures under-represent the extent of the SLC issue, we did not have sufficient data to determine whether the SLC-related ruptures extend beyond those services discussed above. Therefore, we requested additional information from manufacturers and users who were aware of the rupture of any DOT 3AL cylinder or any other cylinder manufactured from aluminum alloy 6351–T6, whether the incident was domestic or foreign, to submit the information in their comments to this rulemaking. More broadly, we invited commenters to address the issue of whether the new inspection requirements proposed in the NPRM should apply to cylinders manufactured of aluminum alloy 6351–T6 and used in services other than SCUBA, SCBA, or oxygen.

III. Analysis of Comments

We received comments from several individuals and organizations, including cylinder manufacturers, representatives of the SCUBA and compressed gas industries, and eddy current test equipment manufacturers. In this supplemental notice, we discuss comments submitted to the docket, concerns raised by commenters, and our decisions on specific issues.

A. Prohibited Use of 6351–T6 Cylinders

In response to the known susceptibility of cylinders made of aluminum alloy 6351–T6 to SLC, the NPRM discussed three possible options, which were evaluated as part of a cost-benefit analysis to address existing safety concerns: (1) Leaving the cylinder in service without taking any additional measures to reduce the risk, (2) immediately removing all cylinders made of aluminum alloy 6351–T6 from service, or (3) performing a NDE at the time of the cylinder's periodic requalification and requiring additional operational controls (OC) during the cylinder filling process. After careful analysis, we selected the third option.

Several commenters suggest that option (3) does not provide an adequate level of safety. The commenters state that SLC is a manufacturing problem, and no level of testing will prevent future incidents. These commenters assert that the only way to prevent future SLC incidents is to prohibit the use of all aluminum alloy 6351–T6 cylinders. They also assert that the safety benefits outweigh the costs involved in removing these cylinders from service and express concern that the SLC problem will only get worse if the cylinders remain in service.

We agree. However, the original economic evaluation showed immediate removal of these cylinders from service would place an undue economic burden on the affected industries. Although the economic burden of immediate removal is not justified, a gradual phase out of these cylinders over time will address the safety issue, and limit the costs associated with removal of these cylinders. Users of DOT 3AL cylinders generally replace them with a new one after 45–50 years. We revised the economic analysis to examine the costs of implementing option (3) with the addition of a 40-year service life. The economic analysis showed the addition of a 40-year service life to option (3) would provide an effective phase-out of these cylinders over time without imposing significant costs on the affected industries. Since most of these cylinders were manufactured prior to 1990, total removal of these cylinders would be accomplished by the year 2030. In this SNPRM we are proposing the addition of a 40-year service life on existing DOT 3AL cylinders manufactured of aluminum alloy 6351–T6. Under this proposal, cylinders would be prohibited from service when they reach the end of a 40-year service life. We are soliciting comments on whether a 40-year period from the date of manufacture is an appropriate service life for these affected cylinders.

B. Combined Visual and Eddy Current Testing

The NPRM proposed the addition of a combined external visual and eddy current examination at each required 5-year periodic requalification for DOT 3AL cylinders manufactured of aluminum alloy 6351–T6. The EE would be performed in accordance with the procedure outlined in Appendix C to Part 180. The visual examination would be conducted in accordance with CGA Pamphlet C–6.1.

Some commenters express concern over the five-year retest period as not frequent enough to detect SLC. One commenter states that experience has shown SLC gradually becomes noticeable 2–4 years before a catastrophic event. The commenter describes an incident in which a CO_2 cylinder leaked through the threads during filling. The leak was a result of SLC. The cracking was not visible at the previous qualification, but in less than a year's time the crack became large enough to leak product. Another commenter asserts that cylinders filled frequently (*e.g.*, SCUBA) are more susceptible to SLC and should be tested more frequently than once every five years. The commenter cites the dive industry standard of conducting visual inspections on an annual basis and recommends reducing the retest period to 2.5 years.

We disagree. Research has shown SLC is a slow growing crack. A cylinder manufactured of aluminum alloy 6351–T6 properly examined using a combination of an external visual and the eddy current is not likely to develop a critical SLC within a five year period. Further, requiring a more frequent examination would impose an unnecessary burden on the regulated community without significantly increasing safety.

A few commenters express concern about the qualification requirements for inspectors who conduct the EEs. A large number of the dive and fire industry EEs are conducted by trained technicians that have not been specifically approved in accordance with § 107.805 to requalify DOT specification cylinders. Commenters suggest it may be difficult to locate approved requalifiers with the capability to conduct eddy current examinations.

We recognize it may be difficult to locate an inspector qualified to perform

the EE and specifically approved in accordance with § 107.805. In this SNPRM we are proposing to require each cylinder made of aluminum alloy 6351–T6 to be initially examined using the eddy current/visual examinations within 3 years from publication of a final rule in the **Federal Register**. We believe the transition period provides a sufficient amount of time for inspectors to obtain approval to perform eddy current/visual examinations in accordance with § 107.805. We are soliciting comments on the proposed 3 year transition period for initial eddy-current/visual examinations of the affected cylinders.

C. Eddy Current and Visual Examination Method (Part 180, Appendix C)

Several commenters recommend changes to the EE procedures specified in proposed Appendix C to Part 180. Some commenters suggest the procedures provided in Appendix C to Part 180 is outdated. They recommend revising the language to more appropriately reflect the terminology used in the industry today. In addition, some commenters suggest the procedure is too specific. One commenter states, ''by detailing the exact steps to be followed and describing how the probe must be handled, how the defect signal should look, etc., you are in essence stating that only one manufacturer's equipment is acceptable for the test.'' These commenters note the operational procedures for eddy current equipment vary with the manufacturer and test equipment. To avoid confusion and conflicting procedures, these commenters recommend requiring EEs in accordance with the manufacturer's instructions. Some commenters recommend revising Appendix C to Part 180 to list the elements that must be included in the procedure, and the criteria by which cylinders must be condemned, without stating specific procedural methods. They suggest this will avoid limiting the industry to specific procedures that may conflict with current manufacturer recommendations used by industry today. One commenter states it is inappropriate for PHMSA to refer to equipment produced by specific manufacturers when describing the requirements for an appropriate EE and suggest we remove any references to equipment produced by a specific manufacturer.

We agree with the commenters. The procedures proposed in Part 180, Appendix C may be too specific. Further, it is not our intention to require or endorse the use of eddy current equipment supplied by a particular manufacturer. In this SNPRM, we are revising Part 180, Appendix C to provide general eddy current and visual examination procedures, recordkeeping requirements, and personnel qualifications. In addition, we are proposing to require requalifiers to develop, update, and maintain examination procedures applicable to the test equipment they use to perform eddy current examinations.

The NPRM proposed that cylinders found to have a two-thread crack in the neck or shoulder area must be rejected. Some commenters recommend revising the rejection criteria to include any crack in the cylinder, rather than any two-thread crack. These commenters suggest more stringent rejection criteria will provide a higher level of safety.

We disagree. The rejection criteria stated in the NPRM are based on the size of the notch in the standard reference ring used to calibrate the eddy current equipment. Aluminum cylinder manufacturers and eddy current experts have conducted extensive research to determine the SLC rejection criteria. The two-thread length is based on a correlation between SLC depth and growth-rate. The SLC initiates from the crown (shoulder) and proceeds toward the neck of the cylinder. Research has shown existing cracks shorter than two threads are not likely to become critical prior to the next requalification (five years).

The regulations do not currently specify whether the eddy current examination should be conducted before, or after the hydrostatic test. One commenter requested clarification of this issue. To clarify, the eddy current and visual examination may be performed either before or after the hydrostatic examination.

D. Training

The NPRM proposed that in addition to the periodic requalification and marking described in § 180.205, cylinders manufactured of aluminum alloy 6351–T6 used in SCUBA, SCBA, and oxygen services must be subjected to an eddy current and visual examination. The NPRM did not propose additional training requirements for persons performing these examinations.

Some commenters express concern that persons performing the combination visual and eddy current examination may not receive adequate training to perform these tests. These commenters suggest we add a formal function-specific training requirement for persons performing these examinations.

We agree with the commenters. In this SNPRM, we are proposing additional training requirements in Part 180, Appendix C for persons who perform EEs combined with visual examinations of DOT 3AL cylinders manufactured of aluminum alloy 6351–T6. We are soliciting comments on the proposed training requirements.

E. CO_2 Service

The requalification method proposed in the NPRM for aluminum cylinders constructed of 6351–T6 aluminum alloy would have applied only to cylinders used in SCUBA, SCBA, and oxygen service. We did not propose to require cylinders used in CO_2 service to be subjected to the visual and eddy current examination.

One commenter expresses concern that the proposed revision to the requalfication method for aluminum alloy cylinders does not include cylinders used in CO_2 service. The commenter states, ''It is true that CO_2 beverage cylinders are typically filled to lower pressures than those used in SCUBA, SCBA and oxygen services. However, the incidence of SLC is great enough that we believe it compromises safety to exclude any cylinders from the proposed rule.'' Another commenter conducted an in-house survey of condemned cylinders over a three year period (2001–2003). The results of the survey showed a significant number of CO_2 cylinders condemned due to SLC.

We agree with commenters that aluminum cylinders used in CO_2 service are susceptible to SLC. In this SNPRM, we propose to expand the scope of the rulemaking to include CO_2 cylinders. Many users of aluminum alloy cylinders in the beverage service industry are already conducting EEs. We believe including CO_2 cylinders will further enhance transportation safety.

F. Operational Controls for Filling Aluminum Alloy Cylinders

In the NPRM, we proposed to add operational controls during the filling of cylinders constructed of aluminum alloy 6351–T6. The proposed operational controls included a provision requiring the cylinder filler to allow only those individuals essential to the filling process to be in the vicinity of the cylinder during the filling process.

Commenters generally support this requirement. One commenter suggests the term ''vicinity'' is not clearly defined and could lead to wide interpretation. The commenter requests we clarify the area that is intended to be covered by the term ''vicinity.''

We recognize the term vicinity could be widely interpreted. The intent of this requirement is to protect non-essential personnel and innocent bystanders from injury if a cylinder were to rupture during filling. For purposes of this requirement, vicinity means a location near or around the filling operation that would impose an unreasonable risk of injury to an individual if the cylinder were to rupture during the filling process. The actual distance could vary broadly depending upon the type of safety mechanisms in place and the actual square footage of a particular filling location.

IV. Proposals in This SNPRM

In this SNPRM, we are revising certain amendments originally proposed in the NPRM, expanding the scope of the rulemaking, and proposing additional requirements for DOT 3AL cylinders manufactured of aluminum alloy 6351–T6. Proposed amendments include:

- Expanded requalification and use requirements to include DOT 3AL cylinders manufactured of aluminum alloy 6351–T6 used in CO_2 service.
- A 40-year service life for cylinders manufactured of aluminum alloy 6351–T6 and used in SCBA, SCUBA, oxygen and CO_2 service.
- Additional training requirements for persons performing the eddy current examination combined with a visual inspection.
- Modified procedures and recordkeeping requirements for EEs.
- A requirement to perform the initial eddy current examination combined with visual inspection for DOT 3AL cylinders manufactured of aluminum alloy 6351–T6 within three years of publication of a final rule in the **Federal Register**.

V. Section-by-Section Review

Part 173

Section 173.301

We are proposing to revise paragraph (d) and add a new paragraph (o) to impose a 40-year service life on cylinders manufactured of aluminum alloy 6351–T6 and used in SCBA, SCUBA, oxygen and CO_2 service. The 40-year service life will promote safety by phasing out the use of cylinders susceptible to SLC.

Section 173.302

We are proposing to add a new paragraph (e) to require that operational controls must be in place during the filling process for cylinders manufactured of aluminum alloy 6351–T6. The operational controls will reduce the risk of injury and property damage during the filling process.

Part 180

Section 180.205

We are proposing to revise paragraph (f)(4) to provide reference to Part 180, Appendix C for requalification requirements for DOT 3AL cylinders manufactured of aluminum alloy 6351–T6.

Section 180.209

We are proposing to amend paragraph (a), the entry for the DOT 3AL cylinder in the ''Requalification of Cylinders'' table to add a reference to the new paragraph (m). In addition, we propose to add a new paragraph (m) to include a NDE for cylinders manufactured of aluminum alloy 6351–T6. The NDE will be used to detect SLC in the neck and shoulder area of the cylinder. The initial NDE would be required within three years following publication of a final rule in the **Federal Register**, and every five years thereafter.

Section 180.213

We are revising paragraph (d) and adding a new paragraph (f)(8) to specify the requalification marking requirements for aluminum cylinders successfully passing the combined eddy current examination and visual inspection. We are soliciting comments on whether ''VE'' is a suitable marking designation for cylinders passing the examination.

Appendix C to Part 180

We are proposing to amend Appendix C to Part 180 to provide acceptable procedures, training and recordkeeping requirements for performing the eddy current examination and visual inspection of cylinders manufactured of aluminum alloy 6351–T6.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This SNPRM is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. To this end, as discussed in detail earlier in this preamble, the SNPRM proposes to revise current HMR requirements applicable to aluminum cylinders manufactured using aluminum alloy 6351–T6. The purpose of the SNPRM is to adopt a standard for early detection of SLC to reduce the risk of a cylinder rupture and to establish a service life for cylinders manufactured of aluminum alloy 6351–T6.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

The compliance costs associated with this rule are minimal. The regulatory analysis indicates the increased cost for imposing a 40-year service life, performing an NDE, and implementing operational controls is small compared to the cost and safety risks of doing nothing; it is significantly less than the cost of immediately removing all cylinders from service. The annual benefits of implementing the proposals in this NPRM total $1,123,969 for avoided injuries and fatalities compared to an annual cost to the industry of $669,130. The economic evaluation data were based on information obtained from cylinder manufacturers, industrial gas companies, cylinder inspectors, and on metallurgical evaluation of the ruptured cylinders. A regulatory analysis is available for review in the docket.

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule would preempt State, local and Indian tribe requirements but does not adopt any regulation with direct effects on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. The Federal hazmat law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to

hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule covers items 2 and 5 and would preempt any State, local, or Indian tribe requirements not meeting the ''substantively the same'' standard.

Pursuant to § 5125(b)(2) of the Federal hazmat law, if the Secretary of Transportation issues a regulation concerning any of the covered subjects, the Secretary must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA has determined the effective date of Federal preemption for these requirements will be one year from the date of publication of a final rule in the **Federal Register**.

D. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is not required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Regulatory Polices and Procedures

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant economic impact on a substantial number of small entities. This rule imposes only minimal new costs of compliance on the regulated industry. Based on the assessment in the regulatory evaluation, I hereby certify that while this rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. A detailed Regulatory Flexibility analysis is available for review in the docket.

This proposed rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's policies and procedures to promote compliance with the Regulatory Flexibility Act to ensure potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA currently has an approved information collection under OMB Control No. 2137–0022, Testing, Inspection, and Marking Requirements for Cylinders'' with 168,431 burden hours, and an expiration date of August 31, 2008. This supplemental notice of proposed rulemaking may result in a modest increase in annual burden and costs based on a new information collection requirement. These proposals regarding the shipment of aluminum cylinders may result in a new information collection requirement will be submitted to OMB for review and approval.

Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a new information collection request PHMSA will submit to OMB for approval based on the requirements in this supplemental proposed rulemaking.

PHMSA has developed burden estimates to reflect changes in this SNPRM. PHMSA estimates the total information collection and recordkeeping burden as proposed would be as follows:

OMB No. 2137–0022:

Total Annual Number of Responders: 139,352.

Total Annual Responses: 153,287.

Total Annual Burden Hours: 271,461.

Total Annual Burden Cost: $2,615,515.

Total One-Time Start-Up Cost: $964,000.

PHMSA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive your comments prior to the close of comment period identified in the DATES section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. If these proposed requirements are adopted in a final rule, PHMSA will submit the revised information collection and recordkeeping requirements to the Office of Management and Budget for approval.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553. We will publish a notice advising interested parties of the OMB approval for this information collection request when approved by OMB.

In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, OMB, at fax number 202–395–6974. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this proposed rule. PHMSA is amending requirements in the HMR pertaining to DOT 3AL aluminum cylinders. The purpose of this rulemaking initiative is to minimize personal injury during the cylinder

filling process and to adopt a standard for early detection of sustained load cracking in order to reduce the risk of a cylinder rupture. Adopting a standard for early detection of sustained load cracking in order to reduce the risk of a cylinder rupture has no potential for environmental damage or contamination.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR chapter I, subchapter C as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENT AND PACKAGES

1. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

2. In § 173.301, paragraph (d) is revised and a new paragraph (o) is added to read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical vessels.

* * * * *

(d) *Gases capable of combining chemically.* A filled cylinder may not contain any gas or material capable of combining chemically with the cylinder's contents or with the cylinder's material of construction, so as to endanger the cylinder's serviceability.

* * * * *

(o) *DOT 3AL cylinders made of aluminum alloy 6351–T6.* A DOT 3AL cylinder manufactured of aluminum alloy 6351–T6 and used in self-contained underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), oxygen, or CO^2 services has a 40-year service life from the date of manufacture. No person may fill and offer for transportation or transport a DOT 3AL cylinder made of aluminum alloy 6351–T6 that has been in service longer than forty years. However, a cylinder in transportation or a cylinder filled prior to the expiration of its authorized service life may be transported for reprocessing or disposal of the cylinder's contents. A DOT 3AL cylinder manufactured of aluminum alloy 6351–T6 may not be filled and offered for transportation or transported with pyrophoric gases.

3. In § 173.302, a new paragraph (e) is added to read as follows:

§ 173.302 Filling of cylinders with nonliquefied (permanent) compressed gases.

* * * * *

(e) *DOT 3AL cylinders manufactured of 6351–T6 aluminum alloy.* Suitable safeguards should be provided to protect personnel and facilities should failure occur while filling cylinders manufactured of aluminum alloy 6351–T6 used in self-contained underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), oxygen and Carbon dioxide services. The cylinder filler should allow only those individuals essential to the filling process to be in the vicinity of the cylinder during the filling process.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

5. In § 180.205, paragraph (f)(4) is revised to read as follows:

§ 180.205 General requirements for requalification of cylinders.

* * * * *

(f) * * *

(4) In addition to other requirements prescribed in this paragraph (f), a specification cylinder made of aluminum alloy 6351–T6 must be inspected for sustained load cracking in accordance with Appendix C of this part.

* * * * *

6. In § 180.209, in paragraph (a), in the ''Requalification of Cylinders'' table the entry ''DOT 3AL'' is revised, and a new paragraph (m) is added to read as follows:

§ 180.209 Requirements for requalification of specification cylinders.

* * * * *

(a) * * *

TABLE 1.—REQUALIFICATION OF CYLINDERS [1]

Specification under which cylinder was made	Minimum test pressure (psig.) [2]	Requalification period (years)
* *	* * *	* *
DOT 3AL	5/3 times service pressure	5 or 12 (see § 180.209(j) and § 180.209(m) [3]).
* *	* * *	* *

[1] Any cylinder not exceeding 2 inches outside diameter and less than 2 feet in length is excepted from volumetric expansion test.
[2] For cylinders not marked with a service pressure, see § 173.301(e)(1) of this subchapter.
[3] This provision does not apply to aluminum cylinders used in fire extinguisher service.

* * * * *

(m) *DOT–3AL cylinders manufactured of 6351–T6 aluminum alloy.* In addition to the periodic requalification and marking described in § 180.205, each cylinder manufactured of aluminum alloy 6351–T6 used as a self-contained underwater breathing apparatus (SCUBA), a self-contained breathing apparatus (SCBA), or in oxygen or Carbon dioxide service must be requalified and inspected for sustained load cracking in accordance with the non-destructive examination method described in the following table. Each cylinder with sustained load cracking that has expanded into the neck threads must be condemned in accordance with

§ 180.205(i). This provision does not apply to aluminum cylinders used in fire extinguisher service or industrial gases in other than Carbon dioxide service.

REQUALIFICATION AND INSPECTION OF DOT–3AL CYLINDERS MADE OF ALUMINUM ALLOY 6351–T6

Requalification requirement	Examination procedure [1]	Sustained load cracking rejection criteria [2]	Requalification period (years) [3]
Eddy current examination combined with visual inspection.	In accordance with Appendix C of this part. Visual inspection—In accordance with CGA Pamphlet C–6.1 (IBR; see § 171.7 of this subchapter).	Any 2-thread crack in the neck or shoulder area.	5

[1] The requalifier performing eddy current must be familiar with the eddy current equipment and must standardize (calibrate) the system in accordance with the requirements provided in Appendix C to this part.
[2] The eddy current must be applied from the inside of the cylinder's neck to detect any sustained load cracking that has expanded into the neck threads.
[3] Each cylinder must receive an initial inspection using the eddy current examination combined with visual inspection prior to [DATE THREE YEARS FOLLOWING THE PUBLICATION DATE OF THE FINAL RULE IN THE **Federal Register**] and every 5 years thereafter.

7. In § 180.213, paragraph (d) introductory text is revised and a new paragraph (f)(8) is added to read as follows:

§ 180.213 Requalification markings.

* * * * *

(d) *Requalification markings.* Each cylinder that has successfully passed requalification must be marked with the RIN set in a square pattern, between the month and year of the requalification date. The first character of the RIN must appear in the upper left corner of the square pattern; the second in the upper right; the third in the lower right; and the fourth in the lower left. Example: A cylinder requalified in September 1998, and approved by a person who has been issued RIN ''A123'', would be marked plainly and permanently into the metal of the cylinder in accordance with location requirements of the cylinder specification or on a metal plate permanently secured to the cylinder in accordance with paragraph (b) of this section. An example of the markings prescribed in this paragraph (d) is as follows:

A1
9 98 X
32

Where:
''9'' is the month of requalification
''A123'' is the RIN
''98'' is the year of requalification, and
''X'' represents the symbols described in paragraphs (f)(2) through (f)(8) of this section.

* * * * *

(f) * * *

(8) For designation of the eddy current examination combined with a visual inspection, the marking is as illustrated in paragraph (d) of this section, except that the ''X'' is replaced with the letters ''VE.''

8. In Part 180, Appendix C is added to read as follows:

Appendix C to Part 180—Eddy Current Examination With Visual Inspection for DOT–3AL Cylinders Manufactured of Aluminum Alloy 6351–T6

1. *Examination Procedure.* Each facility that performs eddy current examination with visual inspection must develop, update, and maintain a written examination procedure applicable to the test equipment it uses to perform eddy current examinations.

2. *Visual examinations.* Visual examinations of the neck and shoulder area of the cylinder must be conducted before and after the eddy current examination and in accordance with CGA pamphlet C–6.1 (IBR; see § 171.7 of this subchapter).

3. *Eddy Current Equipment.* A reference ring and probe for each DOT–3AL cylinder manufactured of aluminum alloy 6351–T6 to be inspected must be available at the examination facility. Eddy current equipment must be capable of accurately detecting the notches on the standard reference ring.

4. *Eddy Current Reference Ring.* The reference ring must be produced to represent the outer diameter (O.D.) of each cylinder to be tested. The reference ring must include artificial notches that will simulate a neck crack. The size of the artificial notch (depth and length) must have a depth equal to ⅓ of the wall thickness of the neck and a length equal to two threads. The standard reference must have a drawing that includes the diameter of the ring, and depth and length of each notch.

5. *Rejection Criteria.* A cylinder must be rejected if the eddy current examination reveals any crack in the neck of 2 thread lengths or more.

6. *Examination equipment records.*

Records of eddy current inspection shall contain the following information:

(i) Equipment manufacturer, model number and serial number.

(ii) Probe description and unique identification (*e.g.*, serial number, part number, etc.).

7. *Eddy current examination reporting and record retention requirements.* Daily records of eddy current examinations must be maintained by the person who performs the requalification until either the expiration of the requalification period or until the cylinder is again requalified, whichever occurs first. These records must be made available for inspection by a representative of the Department on request. Eddy current examination records shall contain the following information:

(i) Specification of each standard reference ring used to perform the eddy current examination.

(ii) DOT specification or exemption number of the cylinder, manufacturer's name or symbol, owner's name or symbol, and date of manufacture.

(iii) Name of test operator performing the eddy current examination.

(iv) Date of eddy current examination.

(v) Location and type of defect on the cylinder crown or the threaded neck (*e.g.*, 5 threads).

(vi) Acceptance/rejection results (*e.g.* pass or fail).

(vii) Retester identification number.

8. *Personnel Qualification Requirements.* Each person who performs eddy current and visual examinations, and evaluates and certifies retest results must satisfy one of the following qualification requirements:

(i) Is certified to a minimum Level I in accordance with the American Society for Nondestructive Testing (ASNT) Recommended Practice SNT–TC–1A; or

(ii) Has received a certification by the employer or the eddy current equipment manufacturer that he/she has been trained and tested in the eddy current and visual examination procedures.

9. *Training Records.* A record of current training must be maintained for each employee who performs eddy current and visual examinations in accordance with § 172.704(d).

Issued in Washington, DC on October 17, 2005, under authority delegated in 49 CFR parts 1.45 and 1.53.

Robert A. McGuire,

Associate Administration for Hazardous Materials Safety.

[FR Doc. 05–21273 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding on Petitions to Establish the Northern Rocky Mountain Distinct Population Segment of Gray Wolf (Canis lupus) and to Remove the Gray Wolf in the Northern Rocky Mountain Distinct Population Segment from the List of Endangered and Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a 90-day petition finding and initiation of a status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), announce a 90-day finding for two petitions—(1) the first that sought removal of the gray wolf from the designation of endangered under the Endangered Species Act of 1973, as amended (ESA); and (2) the second that requested to establish the northern Rocky Mountain Distinct Population Segment (Rocky Mountain DPS) of gray wolf (*Canis lupus*) and to remove the gray wolf in the northern Rocky Mountain DPS from the Federal list of threatened and endangered species, pursuant to the ESA. Although only one of these petitions presented substantial information, we have considered the collective weight of evidence indicating that the northern Rocky Mountain population of gray wolves may qualify as a DPS and that delisting may be warranted. We are initiating a status review to determine if delisting the species is warranted. To ensure that the review is comprehensive, we are soliciting information and data regarding this species.

DATES: The finding announced in this document was made on October 17, 2005. To be considered in the 12-month finding for this petitioned action, data, information, and comments should be submitted to us by December 27, 2005.

ADDRESSES: Data, information, written comments and materials, or questions concerning these petitions and this finding should be submitted to the U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 100 N. Park, Suite 320, Helena, Montana 59601. Comments on this finding also may be sent by electronic mail to *WesternGrayWolf@fws.gov.* The petition finding, supporting information, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ed Bangs, Western Gray Wolf Recovery Coordinator, at telephone number 406–449–5225, extension 204.

SUPPLEMENTARY INFORMATION:

Background

Historically, wolves (*Canis lupus*) occupied all of the conterminous United States, except for arid deserts and mountaintops of the western United States and portions of the eastern and southeastern United States (Youngman and Goldman 1944; Hall 1981; Mech 1974; Nowak 2000). The gray wolf was eliminated from Montana, Idaho, and Wyoming by the 1930s (Young and Goldman 1944). Thereafter, only isolated observations of individuals and non-breeding pairs were reported in the area. In 1974, the USFWS listed the eastern timber wolf (*C. l. lycaon*) as threatened in Minnesota and the northern Rocky Mountain wolf (*C. l. irremotus*) as endangered in Montana and Wyoming under the ESA (16 U.S.C. 1531 et seq.) (U.S. Department of the Interior 1974; 39 FR 1171, January 4, 1974). To eliminate problems with listing separate subspecies of the gray wolf whose taxonomy was contentious, and identifying relatively narrow geographic areas in which those subspecies were protected, on March 9, 1978, we published a rule (43 FR 9607) relisting the gray wolf at the species level (*C. lupus*) as endangered throughout the conterminous 48 States and Mexico, except for Minnesota, where the gray wolf was reclassified as threatened. In 1995 and 1996, we reintroduced wolves from western Canada to remote public lands in central Idaho and Yellowstone National Park (Bangs and Fritts 1996; Fritts et al. 1997; Bangs et al. 1998). Prior to this reintroduction of wolves, we determined that a few lone individual wolves but no packs remained in Idaho, Wyoming, and Washington. By the end of 2004, there were an estimated 835 wolves in 110 packs in the United States northern Rocky Mountains (USFWS *et al.* 2005). Sixty-six of these packs met our definition of a ''breeding pair'' (i.e., an adult male and an adult female that raise at least 2 pups until December 31 of the year of their birth) (USFWS et al. 1994; USFWS et al. 2005; 68 FR 15817, April 1, 2003). As noted in the 2003, 2004, and 2005 Rocky Mountain Wolf Recovery Annual Reports, the USFWS will propose delisting (removal from protection under the ESA) once all provisions required for delisting are met, including adequate regulatory mechanisms in the form of State laws and wolf management plans that would reasonably assure that the gray wolf would not become threatened or endangered again.

On April 1, 2003, we published a final rule revising the listing status of the gray wolf across most of the conterminous United States from endangered to threatened (68 FR 15804). On January 31, 2005, and August 19, 2005, the U.S. District Courts in Oregon and Vermont, respectively, concluded that the 2003 final rule was ''arbitrary and capricious'' and violated the ESA (*National Wildlife Federation* v. *Norton,* 1:03–CV–340, D. VT. 2005; *Defenders of Wildlife* v. *Norton,* 03–1348–JO, D. OR 2005). The Courts' rulings invalidated the April 2003 changes to the ESA listing for the gray wolf (*National Wildlife Federation* v. *Norton; Defenders of Wildlife* v. *Norton*). Therefore, the USFWS currently considers the classification of the gray wolf in the Rocky Mountains outside of areas designated as nonessential experimental populations to have reverted back to the endangered status that existed prior to the 2003 reclassification.

On October 30, 2001, we received a petition dated October 5, 2001, from the Friends of the Northern Yellowstone Elk Herd, Inc., (hereafter referred to as the Friends Petition) that sought removal of the gray wolf from the designation of endangered under the ESA (Karl Knuchel, P.C., A Professional Corporation Attorneys at Law in litt. 2001a). On November 16, 2001, we sent a letter to the attorney representing this group acknowledging the petition and requested clarification on several issues (T. J. Miller, USFWS, in litt. 2001). Additional correspondence in late 2001 provided clarification of their intent that the petition only apply to the Montana, Wyoming, and Idaho population and that the petition request full delisting of this population (Knuchel in litt. 2001b). In January 2002, this petition was assigned to Region 6 of the USFWS for processing (T. J. Miller in litt. 2002). Since 2002, the USFWS has focused its limited wolf recovery funding and staff resources toward authoring regulations and reclassification proposals, including the completion of the 2003 downlisting rule discussed above; assisting the Department of Justice in litigation; preparation of administrative records; wolf recovery and management; responding to correspondence and Freedom of Information Act requests (5 U.S.C. 552, as amended by Pub. L. 104–231, 110 Stat. 3048); and other administrative and legal mandates.

On July 19, 2005, we received a petition dated July 13, 2005, from the

Office of the Governor, State of Wyoming and the Wyoming Game and Fish Commission (hereafter referred to as the Wyoming Petition) to revise the listing status for the gray wolf (*Canis lupus*) by establishing the northern Rocky Mountain DPS and to concurrently remove the gray wolf in the northern Rocky Mountain DPS from the Federal list of threatened and endangered species (Dave Freudenthal, Office of the Governor, State of Wyoming, in litt. 2005). On August 17, 2005, we provided a written response to the petitioner explaining our intention to complete a 90-day finding on this petition as soon as possible (Ralph Morgenweck, USFWS , in litt. 2005).

Section 4(b)(3)(A) of the ESA requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. ''Substantial information'' is defined in 50 CFR 424.14(b) as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.'' Petitioners need not prove that the petitioned action is warranted to support a ''substantial'' finding; instead, the key consideration in evaluating a petition for substantiality involves demonstration of the reliability and adequacy of the scientific and commercial information supporting the action advocated by the petition. We do not conduct additional scientific and commercial research at this point, nor do we subject the petition to rigorous critical review regarding the delisting factors. If we find substantial scientific and commercial information exists to support the petitioned action, we are required to promptly commence a status review of the species (50 CFR 424.14). To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**.

Species Information

For detailed information on this species see the April 1, 2003, ''Final rule to reclassify and remove the gray wolf from the list of endangered and threatened wildlife in portions of the conterminous United States'' (68 FR 15804). Additional information, including weekly gray wolf recovery status reports and the Rocky Mountain Wolf Recovery 2005 Annual Report, are available online at *http://westerngraywolf.fws.gov/.*

Discussion of Information Presented by the Petitions and Readily Available in our Files

The Friends Petition identified the organization requesting delisting, noted that the gray wolf was protected under the ESA, and requested removal of the species from the protections of the ESA. This two-page petition noted ''that substantial scientific and commercial information exists that supports the request,'' but failed to elaborate on this claim. The Friends Petition did not discuss—(1) whether the northern Rocky Mountain gray wolf population constitutes a ''listable entity'' under the ESA (i.e., a species, a subspecies, or a Distinct Population Segment (61 FR 4722, February 7, 1996)), or (2) any of the five factors considered in delisting actions outlined in section 4(a)(1) of the ESA. While the Friends Petition provided a collection of ''exhibits'' in support of its request, the petition failed to present a case for delisting that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. Therefore, the remainder of this finding focuses on the assertions of the Wyoming Petition. Below we respond to each of the major assertions made in the Wyoming Petition, including the assertions of discreteness and significance of a potential DPS and the ESA's five listing factors.

Both the Wyoming Petition and our discussion of the information in our files references scientific information in the April 1, 2003, ''Final rule to reclassify and remove the gray wolf from the list of endangered and threatened wildlife in portions of the conterminous United States'' (68 FR 15804). Although this rule was vacated and enjoined by Oregon and Vermont Federal district courts, the scientific information discussed below, cited to the April 1, 2003, **Federal Register**, was not challenged in those courts. Therefore, we still view this document as a valid summary of our view of the science and a reliable summary of the information in our files. This 90-day finding is not a status assessment and does not constitute a status review under the ESA.

Distinct Population Segment

Pursuant to the ESA, we shall consider for listing any species, subspecies, or, for vertebrates, any DPS of these taxa if there is sufficient information to indicate that such an action may be warranted. Under our DPS policy, we must consider three factors in a decision regarding the establishment of a possible DPS, including—(1) discreteness of the population segment in relation to the remainder of the taxon (i.e. *Canis lupus*); (2) the significance of the population segment to the taxon to which it belongs; and (3) the population segment's conservation status in relation to the ESA's standards for listing (i.e., is the population segment, when treated as if it were a species, endangered or threatened) (61 FR 4722, February 7, 1996). What follows is not a formal DPS analysis. Instead, our finding considers whether the petition states a reasonable case that the petitioned population may be a listable entity.

Discreteness

Under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions—(1) It is markedly separated from other populations of the same taxon (i.e., *Canis lupus*) as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); and/or (2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) (''the inadequacy of existing regulatory mechanisms'') of the ESA (61 FR 4722, February 7, 1996). Below we discuss three arguments for discreteness put forward by the Wyoming Petition, including differences in management among populations in the United States and Canada, physiological differences among populations, and geographic and ecological factors separating populations.

Discreteness Information Provided by the Petitions—Management Differences Among the United States and Canada. The Wyoming Petition states that the northern Rocky Mountain gray wolf population in the United States and Canada are discrete from each other based on differences in exploitation and conservation status. The Wyoming Petition provides no citations in support of this assertion.

Information in Our Files. This assertion is consistent with the information in our files and previous USFWS determinations (68 FR 15804, April 1, 2003). On April 1, 2003, we published a **Federal Register** notice which stated, ''The Vertebrate Population Policy allows us to use international borders to delineate the

boundaries of a DPS even if the current distribution of the species extends across that border. Therefore, we will continue to use the United States—Canada border to mark the northern portions of the (DPS) * * * due to the difference in control of exploitation, conservation status, and regulatory mechanisms between the two countries. In general, wolf populations are more numerous and wide-ranging in Canada; therefore, wolves are not protected by Federal laws in Canada and are publicly trapped in most Canadian provinces'' (68 FR 15819, April 1, 2003). Wolves in Canada are publicly harvested and subject to very liberal defense of property take in most provinces (Pletscher *et al.* 1991; Mech and Boitani 2003; Bangs et al. 2004; Phillips *et al.* 2005).

Discreteness Information Provided by the Petitions—Physiological Differences. The Wyoming Petition asserts that the northern Rocky Mountain population of gray wolves also is markedly separated from other populations of the same taxon as a consequence of physiological (e.g., morphological) factors. The Wyoming Petition cites our 2003 **Federal Register** notice (68 FR 15804, April 1, 2003) and analyzes three of our sources (Brewster and Fritts 1994; Nowak 1994; Wayne et al. 1994) in support of its statements that the northern United States Rocky Mountain wolf population is significantly larger than other wolf populations in the United States.

Information in Our Files. As suggested by the Wyoming Petition, gray wolves in the northern Rocky Mountains differ physiologically from other United States wolf populations. The average male wolf in the northern Rockies weighs approximately 45 kilograms (kg) (100 pounds (lb)) (68 FR 15804, April 1, 2003). By contrast, the average male wolf in Wisconsin weighs 35 kg (77 lb) (Wisconsin Department of Natural Resources 1999; 68 FR 15804, April 1, 2003) and the average historic weights of wild Mexican wolves ranged from 25 to 49 kg (54 to 99 lb) (Young and Goldman 1944). According to Gipson *et al.* (2002), wolves of the Northern Rocky Mountains are slightly larger and contain greater numbers of individuals with black pelts than other wolf populations within the continental United States. Thus, this assertion is consistent with the information in our files.

Discreteness Information Provided in the Petitions—Physical and Ecological Factors. The Wyoming Petition asserts that the northern Rocky Mountain population of gray wolves is markedly separated from other wolf populations as a consequence of physical (geographic) and ecological factors. The Wyoming Petition cites to a sizable collection of literature (68 FR 15804, April 1, 2003; Mech 1989; Mech *et al.* 1988; Oakleaf et al. 2003; Thiel 1985; USFWS 1987, 1994; USFWS et al. 2003, 2004, 2005) suggesting that a broad region of unsuitable habitats surrounding the established northern Rocky Mountain population constitutes a significant physical separation that effectively isolates this population from distant, potentially suitable habitats.

Information in Our Files. This assertion is consistent with the information in our files and previous USFWS determinations (68 FR 15804, April 1, 2003). On April 1, 2003, we published a **Federal Register** notice which stated, ''To date, we have no evidence that any wolves from any of [the United States wolf populations] have dispersed [into other United States wolf populations], although we expect such dispersals to occur. The current gray wolf populations * * * are separated from [other] gray wolf populations * * * by large areas that are not occupied by breeding populations of resident wild gray wolves. Although small numbers of dispersing individual gray wolves have been seen in some of these unoccupied areas, and it is possible that individual dispersing wolves can completely cross some of these gaps between occupied areas and may therefore join another wolf population, we believe that the existing geographic isolation of wolf populations * * * far exceeds the Vertebrate Population Policy's criterion for discreteness'' (68 FR 15818, April 1, 2003). Based on suitable habitat modeling (Oakleaf *et al.* 2005; Carroll *et al.* in prep.), genetic analysis (Forbes and Boyd 1997; Boyd and Pletscher 1999), and known wolf distribution and movement patterns (Bangs *et al.* 1996, 1998; Pletscher *et al.* 1991, 1998; Phillips *et al.* 2005; USFWS *et al.* 1994, 2003, 2004, 2005), wolves in the northern Rocky Mountains appear discrete from other United States wolf populations.

Significance

If we determine a population segment is discrete, we next consider available scientific evidence of its significance to the taxon (i.e., *Canis lupus*) to which it belongs. Our DPS policy states that this consideration may include, but is not limited to, the following—(1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and/or (4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics (61 FR 4722, February 7, 1996). The Wyoming Petition only presented information suggesting the loss of the northern Rocky Mountain gray wolf population would represent a significant loss in the range of the taxon. Below we discuss only this assertion.

Information Provided in the Petitions on Significance. The Wyoming Petition suggests that the loss of the northern Rocky Mountain wolf population would create a significant gap in the taxon's range as this is one of only two self-sustaining, viable populations of gray wolves in the United States. The Wyoming Petition provides no citations in support of this assertion.

Information in Our Files. The USFWS concurs with the assertion that the loss of this population would represent a significant gap in the range of the taxon. On April 1, 2003, we published a **Federal Register** notice which stated that the loss of any of the three wolf populations in the conterminous States ''would clearly produce huge gaps in current gray wolf distribution in the 48 States'' (68 FR 15819). Given historic occupancy of the conterminous States and the portion of the historic range the conterminous States represent, recovery of wolves in the lower 48 has long been viewed as important to the taxon (U.S. Department of the Interior 1974; 39 FR 1171, January 4, 1974; 43 FR 9607, March 9, 1978; Mech and Boitani 2003).

Although this 90-day finding has determined that the petition and other readily available information in our files present a reasonable case that the northern Rocky Mountain population of gray wolves may be both discrete from other wolf populations and significant to the taxon, this finding expresses no final agency view (1) as to the ultimate issue of whether this population qualifies as a DPS; nor (2) where to draw the boundaries of a potential DPS.

Conservation Status

What follows is not a formal status review under the ESA. Our finding considers only whether the petition and information in our files presents a reasonable case that the petitioned action may be warranted. Section 4 of the ESA of 1973 and regulations promulgated to implement the listing provisions of the ESA (50 CFR Part 424)

set forth the procedures for listing, reclassifying, and delisting species under the Federal list of endangered and threatened species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available demonstrates that the species is no longer endangered or threatened because of—(1) extinction; (2) recovery; or (3) error in the original data used for classification of the species. The analysis for a delisting due to recovery must be based on the five factors outlined in section 4(a)(1) of the ESA, including—(1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petitions on Factor A. The Wyoming Petition's discussion of Factor A cites to and quotes from the April 1, 2003 **Federal Register** notice (68 FR 15804). The Wyoming Petition suggests that public lands and ungulate prey base remain secure in suitable habitat. Regarding secure habitat in the northwestern Montana, Central Idaho, and Greater Yellowstone Area recovery zones, the 2003 **Federal Register** notice read, ''These areas of potential wolf habitat are secure and no foreseeable habitat-related threats prevent them from supporting a wolf population that exceeds recovery levels'' (68 FR 15845, April 1, 2003). Regarding ungulates, the 2003 **Federal Register** notice read, ''The States of Montana, Idaho, and Wyoming have managed resident ungulate populations for decades and maintained them at densities that would support a recovered wolf population. There is no foreseeable condition that would cause a decline in ungulate populations significant enough to affect a recovered wolf population'' (68 FR 15845, April 1, 2003). The Wyoming Petition's discussion of this issue concludes with the suggestion that the analysis of foreseeable impacts to habitat done by the USFWS in 2003 remains valid in 2005.

Information in Our Files. Although our 2003 analysis described threats to habitat and range for a downlisting, a situation where many of the protections of the ESA would have remained in place, many of the same principles apply to delisting. According to Oakleaf et al. (2005) and Carroll et al. (in prep), public lands and ungulate prey base in northern Rocky Mountain wolf habitat appear largely secure. Thus, the USFWS finds that the petition's discussion of Factor A presents substantial scientific and commercial information indicating that delisting the species may be warranted.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petitions on Factor B. The Wyoming Petition's discussion of Factor B cites to and quotes from the final wolf downlisting rule (68 FR 15804, April 1, 2003). The Wyoming Petition suggests that commercial, recreational, scientific, and educational take of wolves, their pelts, or other parts is believed to be rare. The Wyoming Petition notes that such utilization will be controlled by State regulatory mechanisms described in State wolf management plans for Idaho, Montana, and Wyoming (70 FR 1289, January 6, 2005). The Wyoming Petition goes on to say that in National Parks, post-delisting removal of wolves for commercial, recreational, and educational purposes will be prohibited and post-delisting utilization for scientific purposes will also be extremely rare (U.S.C. 16, Chapter 1, Sub Chapter V, Sect. 26). Finally, the Wyoming Petition notes that National Park non-lethal utilization of wolves will be limited in order to minimize impacts to wolves.

Information in Our Files. Although commercial, recreational, scientific, and educational take has been rare since listing and is likely to continue to be rare (68 FR 15804, April 1, 2003), adequate State plans are necessary to regulate this issue post-delisting (Bangs *et al.* 1998, 2004, 2005). To date, only the States of Idaho and Montana have approved management plans for gray wolves (70 FR 1289, January 6, 2005). The USFWS has concerns with portions of Wyoming's State law and wolf management plan relating to this factor (USFWS Administrative Record 2004). This issue is discussed further under Factor D.

C. Disease or Predation

Information Provided in the Petitions on Disease. The Wyoming Petition's discussion of disease cites to and quotes from the final wolf downlisting rule (68 FR 15804, April 1, 2003). The Wyoming Petition suggests that although parvovirus, canine distemper, mange, and brucellosis have all been documented in wolves, none appear to be a significant factor affecting wolf population dynamics in the northern Rocky Mountains (USFWS 1994 as in 68 FR 15804, April 1, 2003; Johnson 1992a, 1992b as in 68 FR 15804, April 1, 2003). The Wyoming Petition notes that disease and parasite occurrence require diligent monitoring and appropriate follow up for the foreseeable future (Brand *et al.* 1995 as in 68 FR 15804, April 1, 2003).

Information in Our Files. As of 2003, disease did not appear to be having significant impacts on wolf population dynamics (68 FR 15804, April 1, 2003). However, a recent outbreak of mange has caused wolf mortality and reproductive failure in several packs in the Greater Yellowstone Area and is under investigation (Jimenez *et al.* in prep.). While we view the information presented in the Petition as substantial, additional evaluation of this issue is necessary.

Information Provided in the Petitions on Natural Predation. The Wyoming Petition's discussion of predation by other wildlife cites to and quotes from the final wolf downlisting rule (68 FR 15804, April 1, 2003). The Wyoming Petition suggests that predation by other wildlife occasionally occurs (Mech and Nelson 1989 as in 68 FR 15804, April 1, 2003), but is not believed to be a significant mortality source (68 FR 15804, April 1, 2003).

Information in Our Files. This assertion is consistent with the information in our files and previous USFWS determinations (68 FR 15804, April 1, 2003). No wild animals habitually prey on gray wolves. Wolves are occasionally killed by prey that they are attacking (Mech and Nelson 1989), but those instances are rare. Wolf conflicts with mountain lions, grizzly bears, and black bears rarely result in the death of either species. Predation by other wildlife does not appear to have significant impacts on wolf population dynamics (Bangs *et al.* 1998; Smith *et al.* in prep.; USFWS *et al.* 2005).

Information Provided in the Petitions on Human Predation. The Wyoming Petition's discussion of human predation cites to and quotes from the final wolf downlisting rule for a discussion of this issue up to 2003 (68 FR 15804, April 1, 2003). The Wyoming Petition notes that since the 2003 analysis, 27 wolves were killed in 2003 throughout the northern Rocky Mountain region from human causes other than control actions (USFWS *et al.* 2004) and that, in 2004, 54 wolves were killed from human causes other than control actions (USFWS *et al.* 2005). However, the Wyoming Petition suggests the total number of wolves killed are not preventing the population

from increasing; in fact, wolf populations have increased from 663 individuals in 2002, to 761 in 2003, to 835 in 2004 (USFWS *et al.* 2003, 2004, 2005). Finally, the Wyoming Petition notes that legal harvest by hunters will be regulated under State laws, as described in the State management plans for gray wolves.

Information in Our Files. Adequate State management is necessary to regulate this issue post-delisting (Bangs *et al.* 2004, 2005). To date, only the States of Idaho and Montana have approved management plans for gray wolves (70 FR 1289, January 6, 2005). The USFWS has concerns with portions of Wyoming's State law and wolf management plan relating to this factor (USFWS Administrative Record 2004). This issue is discussed further under Factor D.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petitions on Factor D. The Wyoming Petition asserts that the regulatory mechanisms currently provided in Wyoming Statute 23–1–304 and the Wyoming Gray Wolf Management Plan (2003) are sufficient to reasonably assure Wyoming's share of the population will remain recovered into the foreseeable future. The Wyoming Petition suggests that—(1) the Wyoming management plan can be implemented within existing authorities (State Attorney General in litt. 2003); (2) the USFWS has overstated risks associated with the initial classification of gray wolves as a ''predatory animal''; and (3) the Commission will reclassify wolves as ''trophy game'' if necessary.

Information in Our Files. Based on our review of the State management plans, peer review comments, and the State's responses to those comments, USFWS has determined that both the Montana and Idaho wolf management plans are adequate to maintain their share and distribution of the tri-State wolf population above recovery levels (70 FR 1289, January 6, 2005). However, we have concerns with portions of Wyoming's State law and wolf management plan (USFWS Administrative Record 2004). The USFWS has determined that, for the Wyoming statute and its State plan to constitute an adequate regulatory mechanism, in lieu of listing under the ESA, they must satisfy three conditions. First, Wyoming's predatory animal status for wolves must be changed (Steve Williams, USFWS, in litt. 2004). Second, to constitute an adequate regulatory mechanism, Wyoming State law and plan must clearly commit to managing for at least 15 wolf packs in the State (Williams, USFWS, in litt. 2004). Finally, the Wyoming definition of a ''pack'' should be consistent among the three States and be biologically based (Williams, USFWS, in litt. 2004).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petitions on Factor E. The Wyoming Petition's discussion of Factor E cites to and quotes from the final wolf downlisting rule (68 FR 15804, April 1, 2003), noting that ''the primary determinant of the long-term status of gray wolf populations in the United States will be human attitudes toward this large predator. These attitudes are based on the conflicts between human activities and wolves, concern with the perceived danger the species may pose to humans, its symbolic representation of wilderness, the economic effect of livestock losses, the emotions regarding threats to pets, the conviction that the species should never be a target of sport hunting or trapping, and wolf traditions of Native American tribes.''

Information in Our Files. This assertion is consistent with the information in our files and previous USFWS determinations. Public support for wolf recovery will be the primary determinant of the long-term status of gray wolf populations in the United States (68 FR 15804, April 1, 2003). As noted in the 2003 **Federal Register** notice, ''national support is evident for wolf recovery in the northern U.S. Rocky Mountains. With the continued help of private conservation organizations, States, and tribes, we can continue to foster public support to maintain viable populations in * * * the West'' (68 FR 15804, April 1, 2003; Bangs *et al.* 2004).

Finding

Based on the information presented in the petitions and information in our files, it is reasonable to infer that the gray wolf population in the northern Rocky Mountains appears to have experienced a significant recovery in terms of current population numbers and distribution. At the end of 2004, 835 wolves existed in 110 packs in the northern Rocky Mountains (68 FR 15804, April 1, 2003; USFWS *et al.* 2005). Sixty-six of these packs met our definition of a breeding pair. USFWS determined that a minimum of 30 or more breeding pairs of wolves, comprising 300 or more individuals in a metapopulation with some genetic exchange between subpopulations, with an equitable distribution among the 3 States for at least 3 successive years, constitutes a viable and recovered wolf population (USFWS *et al.* 1994; 68 FR 15804, April 1, 2003). This criterion was met at the end of 2002 and has been surpassed every year since (68 FR 15804, April 1, 2003; USFWS *et al.* 2003, 2004, 2005).

On the whole, we find that the Wyoming petition presents substantial scientific and commercial information indicating that the northern Rocky Mountain gray wolf population may qualify as a DPS and that this potential DPS may warrant delisting. Beyond substantial population and distributional information indicating the northern Rocky Mountain gray wolf population has met its biological recovery goals, the Wyoming petition presented substantial information regarding several of the five factors outlined in section 4(a)(1) of the ESA. The Friends petition failed to present a case for delisting that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. Although only one of these petitions presented substantial information, we have considered the collective weight of evidence and are initiating a 12-month status review. Although our January 2003 determination that Wyoming's regulatory mechanisms are inadequate is still valid, we will fully evaluate this issue in the status review and welcome improvements to Wyoming's Statutes and the Wyoming Gray Wolf Management Plan made within the 12-month status review time period.

Information Solicited

When we make a finding that substantial scientific and commercial information is presented to indicate that delisting a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial data, we are soliciting information on the northern Rocky Mountain population of gray wolves. We request any additional data, comments, and suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the northern Rocky Mountain population of gray wolves. We are seeking information regarding the species' historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat including the adequacy of regulatory mechanisms. If you wish to comment or

provide information, you may submit your comments and materials concerning this finding to the Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service (see **ADDRESSES**).

Our practice is to make comments and materials provided, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your submission. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the address listed above under **ADDRESSES**.

References Cited

A complete list of all references cited herein is available upon request from the Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 17, 2005.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

[FR Doc. 05–21344 Filed 10–25–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 051017269–5269–01; I.D. 100705C]

RIN 0648–AT54

Fisheries of the Exclusive Economic Zone Off Alaska; Cape Sarichef Research Restriction Area Opening for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to open the Cape Sarichef Research Restriction Area in the Bering Sea and Aleutian Islands Management Area (BSAI) to directed fishing for groundfish using trawl, pot, and hook-and-line gear from March 15, 2006, through March 31, 2006. Because NMFS' Alaska Fisheries Science Center (AFSC) will not conduct research in this area in 2006, closure of the Cape Sarichef Research Restriction Area is not needed. This action is intended to relieve an unnecessary restriction on groundfish fisheries and allow the optimum utilization of fishery resources, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This proposed rule also would remove the regulations for the Cape Sarichef Research Restriction Area, as well as regulations for the Chiniak Gully Research Area because both research projects have ended.

DATES: Comments on this proposed rule must be received by November 25, 2005.

ADDRESSES: Send written comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK.
- E-mail: *0648–at54–Sarichef@noaa.gov*. Include in the subject line the following document identifier: Cape Sarichef RIN 0648-AT54. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.
- Fax: 907–586–7557.
- Mail: P.O. Box 21668, Juneau, AK 99802–1668.

Copies of the regulatory impact review (RIR), prepared for this action are available from NMFS at the above address or from the NMFS Alaska Region website at *www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Becky Carls, 907–586–7228 or *becky.carls@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the BSAI and Gulf of Alaska (GOA) are managed by NMFS under the Fishery Management Plans (FMPs) for Groundfish of the BSAI and Groundfish of the GOA. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

Background and Need for Action

In October 2002, the Council adopted a regulatory amendment to implement a seasonal closure to directed fishing for groundfish by vessels using trawl, pot, or hook-and-line gear in a portion of the waters off Cape Sarichef just north of Unimak Pass in the Aleutians (68 FR 11004, March 7, 2003). The purpose of that action was to support an AFSC research project testing the hypothesis that commercial trawl fishing imposed localized depletion on stocks of Pacific cod. The results of the research project had the potential to provide information on the impacts of fishing on Pacific cod stocks, and on Steller sea lion forage resources. That research was scheduled to occur in each of four consecutive years (2003 through 2006) between March 15 and March 31. The closure of this area to pot, hook-and-line, and trawl gear users is applicable through March 31, 2006.

In June 2005, AFSC staff reported to the Council that their research results over the first three years were so unambiguous and consistent that they were ending the study one year earlier than originally planned. The results of the Cape Sarichef study are available on the Internet at *www.afsc.noaa.gov/Quarterly/amj2005/divrptsREFM6.htm*. Because the study would not be conducted in 2006, AFSC staff indicated that the special closure of the study area for March 15–31, 2006, would not be needed. The Council recommended and NMFS is proposing to remove the closure specified in § 679.22(a)(11). Maintaining the closure in 2006 would

unnecessarily restrict the groundfish fisheries because no research will be conducted in 2006. Removing the 2006 trawl, pot, and hook-and-line gear closure would allow vessels participating in groundfish fisheries to harvest their total allowable catch amounts without the operational constraints imposed by the closure.

In addition, this regulatory amendment includes a housekeeping measure that would remove regulations for the Chiniak Gully Research Area off Kodiak Island, which were applicable through December 31, 2004.

Proposed Changes to Regulations

In § 679.22, NMFS proposes to remove and reserve paragraphs (a)(11) and (b)(3). Figure 21 to part 679, which shows the Cape Sarichef Research Restriction Area, also would be removed and reserved.

Classification

NMFS has determined that the proposed rule is consistent with the FMPs and preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The Initial Regulatory Flexibility Analysis (IRFA) prepared to support the original Cape Sarichef closure found that in the years 1998 to 2001, between 36 and 67 entities had operated annually in the State of Alaska statistical area (655430) that includes the Cape Sarichef closure area. Smaller numbers had fished in the two most recent years. Between 21 and 56 of these appear to be small entities under the criteria used by the SBA to identify small fishing entities (annual gross revenues less than or equal to $3.5 million). The IRFA noted that affected operations could include vessels fishing with trawl gear, hook-and-line, and pots, and could include both catcher vessels and catcher processors. No entities are affected by removing the Chiniak Gully regulations because that closure is no longer applicable, and removal of the obsolete references to it in the regulations would be merely a housekeeping amendment.

The IRFA noted that the original closure action had the potential to adversely affect the revenues and costs of directly regulated small entities. Expected impacts were reported likely to accrue due to reduced catch per unit effort in alternative ''open'' fishing areas, and possible crowding externalities (e.g., gear conflicts or displacement). In addition, by forcing operations to fish in different geographic and temporal patterns than they would otherwise have voluntarily chosen, the closure might be associated with some increased operating costs (e.g., longer running times and distances between port and remaining open fishing grounds). This action would rescind a fishing restriction that would otherwise continue to impose costs, but yield no further scientific benefit which was the offsetting factor that led to the original closure. The other aspect of this action simply excises obsolete language from the regulations pertaining to a fishing area closure that is no longer applicable. Therefore, the proposed action would cause no adverse economic impacts on small entities.

In general, the IRFA for the original Cape Sarichef research closure found that the four-year duration of the action that was contemplated at the time would be associated with a very small potential for adverse impacts on small entities. The current action removes any further potential burden (i.e., costs) associated with the Cape Sarichef closure, but does so for only one of the four years initially evaluated. Because the currently closed area is closer to the ports where catcher vessels deliver their harvests than are the likely alternative fishing grounds, lifting the Cape Sarichef restriction would reduce running times, thus saving both time and fuel.

In retrospect, the costs of the four year program appear to have been small based on the supporting analyses for the present action. The cost savings from relieving the Cape Sarichef restriction would be expected to be about one-fourth (one year's worth) of the impact of the original action. Therefore, the presently proposed action is not expected to have a significant impact on any small entities. Likewise, revocation of obsolete language for a closure that is no longer applicable would impose no discernable impacts, positive or negative, on small entities. This action would not place small entities at a competitive disadvantage to large entities.

Because this proposed rule has no significant economic impacts on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: October 20, 2005.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

§ 679.22 [Amended]

2. In § 679.22, remove and reserve paragraphs (a)(11) and (b)(3).

PART 679— [AMENDED]

3. In part 679, remove and reserve Figure 21 to Part 679—Cape Sarichef Research Restriction Area (Applicable through March 31, 2006).

[FR Doc. 05–21385 Filed 10–25–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 206

Wednesday, October 26, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

White/White Project, Clearwater National Forest, Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) to disclose the environmental effect of timber harvest and watershed restoration activities in the White/White project area on the Lochsa Ranger District of the Clearwater National Forest. The White/White project area is located in the Nevada Creek, Mike White Creek, Utah Creek, White Creek, Chamook Creek drainages, a tributaries to Lolo Creek, approximately 12 air-miles southeast of the town of Pierce, Idaho.

DATES: This project was previously scoped in August 2, 1999 and rescoped in May 24, 2001. The comments that were received from the White/White EA will be included in the documentation for the EIS. A 45-day public comment period will follow the release of the draft environmental impact statement that is expected in January 2006. The final environmental impact statement is expected in April 2006.

ADDRESSES: Written comments and suggestions concerning the scope of this project should be sent to Steve Bess (*sbess@fs.fed.us*), Project Leader, Lochsa Ranger District, Rt. 1, Box 398, Kooskia, ID 83539.

FOR FURTHER INFORMATION CONTACT: Steve Bess (*sbess@fs.fed.us*), Project Leader, Lochsa Ranger District, Phone: (208) 926–4274.

SUPPLEMENTARY INFORMATION: The original White/White analysis was documented in an Environmental Assessment, followed by a Decision Notice and Finding of No Significant Impact on June 3, 2003. The decision was withdrawn on October 17, 2005, in favor of proceeding with an Environmental Impact Statement.

The White/White project area contains approximately 7,000 acres, all on National Forest lands. The legal location is in portions of Sections 9, 10, 14, 15, 16, 17, 20, 21, 22, 23, 28, 29, 32, 33, and 34, T35N, R6E; Sections 4 and 5, T34N, R6E; Boise Meridian, Idaho County, Idaho. The proposed actions would occur on National Forest lands and are all outside the boundaries of any inventoried roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Clearwater National Forest Plan or by any past or present legislative wilderness proposals.

Purpose and Need for Action is to: (1) Improve forest health, maintain, and/or restore ecological processes, functions, forest structure, and composition expected to occur today and in the future under natural disturbance regimes by: (a) Emulating the scale of natural disturbance patterns through management activities; (b) re-establishing white pine and larch as a major component of the forest ecosystem; (c) reducing vegetative density to allow for increased tree vigor and vegetative health; (d) changing the tree species mix to a greater percent of early serial intolerant species which are more fire adapted and generally more disease resistant and which more closely emulates the historic species composition of the landscape; (2) restore the aquatic ecosystem to a more natural process and functioning condition by: (a) Reducing road density through the decommissioning of roads not necessary for future management; (b) replacing inadequate culverts that hinder stream connectivity for aquatic organisms; (c) placing roads into long-term storage (pulling culverts, waterbarring, seeding and fertilizing) that are not currently needed but will be needed for future management; and (3) managing the landscape to provide for goods and services deemed important to society.

The Proposed Action would harvest timber through regeneration harvest, commercial thinning, and jackpot burning on approximately 1,215 acres of forestland within the project area. Regeneration harvest (510 acres) would leave approximately 15–20 trees per acre as individual trees and/or in groups to provide a continued source of nutrients and organic material to the soils to maintain site productivity and to provide future snags and down woody material for wildlife habitat. Commercial thinning (655 acres) would reduce the basal area in dense timbered stands down to about 160–180 square feet per acre. Jackpot burning on approximately 50 acres would improve the stand composition by creating openings that can be planted with seral species. There is also an opportunity to precommercial thin approximately 1,740 acres of young stands scattered throughout the project area. Use of existing, temporary, and permanent roads would be needed to access timber harvest areas. An estimated 1.73 miles of existing roads would be reconstructed in addition to 0.5 miles of new specified road constructed to facilitate timber removal. An estimated 1.81 miles of temporary roads would be constructed and obliterated following completion of sale related activities. Watershed restoration activities would consist of an estimated 20.4 miles of roads decommissioned and 14.9 miles of existing roads put into intermittent storage (self-maintaining). This would reduce motorized access by 35.3 miles.

Possible Alternatives the Forest Service will consider including the ''no action'' alternative in which none of the proposed activities would be implemented. Additional alternatives being considered examine varying levels and locations for the proposed activities to achieve the proposal's purpose and need, as well as to respond to the issues and other resource concerns.

The Responsible Official is the Forest Supervisor of the Clearwater National Forest, 12730 Highway 12, Orofino, ID 83544. The Responsible Official will decide if the proposed project will be implemented and will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations. The responsibility for preparing the DEIS and FEIS has been delegated to Cindy Lane, District Ranger, Lochsa Ranger District, Rt. 1 Box 398, Kooskia, ID 83539.

The Scoping Process was initiated with the release of a Scoping Letter in August 1999, April 2001 and comments received during the 30-day comment period of the EA March 2003. Comments received as a result of that effort will be included in the

documentation for the EIS. Additional scoping will follow the release of the DEIS, expected in January 2006. This proposal also includes openings greater than 40 acres. A 60-day public review period was initiated with the scoping of this project on May 16, 2001. Approval to exceed the 40-acre limitation was received from the Regional Forester on March 21, 2003.

Preliminary Issues that could be affected by proposed activities include aesthetics/scenery; air quality; economics; fuels treatment; future management accessibility; heritage resources; old growth; retention of live and dead trees; riparian areas; size of openings; soil compaction and productivity; threatened, endangered, sensitive, and management indicator specifies of wildlife, fish and plants; tribal treaty rights; and water quality.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: October 19, 2005.

Thomas K. Reilly,

Forest Supervisor.

[FR Doc. 05–21334 Filed 10–25–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eldorado National Forest, CA; Notice of Intent To Prepare an Environmental Impact Statement To Designate Routes for Public Off-Highway Wheeled Motor Vehicles

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement to designate a portion of the inventoried routes on the Eldorado National Forest open to public off-highway wheeled motor vehicle [1] use, and assign the type of use(s) and season of use allowed on each road and trail or portion thereof. Inventoried routes not selected for designation for public off-highway wheeled motor vehicle use will be closed to public wheeled motor vehicles year round. Eldorado National Forest maintenance level 3, 4, and 5 system roads subject to the Federal Highway Safety Act are currently designated open to highway legal vehicles. The Forest Supervisor will not propose to redesignate these roads for off-highway wheeled motor vehicles. The Rock Creek multi-use trail area on the Eldorado National Forest is not affected by this decision and is outside the scope of the project.

DATES: Comments on the proposed action should be submitted within 30 days of the date of publication of this Notice of Intent. The draft environmental impact statement is expected by June 2006 and the final environmental impact statement is expected in October 2006.

ADDRESSES: Send written comments to John D. Berry, Forest Supervisor, Eldorado National Forest, 100 Forni Road, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Anthony V. Scardina, Route Designation Interdisciplinary Team Leader, Eldorado National Forest Supervisor's Office by telephone at (530) 621–5276, FAX (530) 621–5297, or by e-mail at *ascardina@fs.fed.us*.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

It is Forest Service policy to provide a diversity of road and trail opportunities for experiencing a variety of environments and modes of travel consistent with the National Forest recreation role and land capability (FSM 2353.03(2)). Modes of travel include hiking, horseback riding, motor biking, and so forth (FSM 2353.2). The Eldorado National Forest Land and Resource Management Plan (ENF LRMP) prohibits wheeled vehicle travel off of designated roads, trails, and limited off-highway vehicle (OHV) use areas (Sierra Nevada Forest Plan Amendment (SNFPA) Record of Decision (ROD), January 2004, S&G #69).

In recent years, the use of OHVs across the Eldorado National Forest has increased substantially. This increased use has led to development of user-created trails, increased conflict between motorized and non-motorized uses; complaints about noise from adjacent landowners; and areas of degraded soil, water, vegetation, and wildlife habitat conditions. The current route inventory for Eldorado National Forest identified approximately 2,830 miles of roads and trails currently receiving some level of OHV use. Of these, 2,110 miles of National Forest System roads and trails are managed for OHV use.

The underlying need for this proposal is to designate routes for public off-highway wheeled motor vehicle use on the Eldorado National Forest. In meeting this need, the selection of designated routes shall achieve the following purposes:

[1] The term *off-highway wheeled motor vehicle* in this proposal means ''any (wheeled) motorized vehicle designed or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain * * *'' (Executive Order 11644, as amended).

Compliance With Code of Federal Regulation

• *Minimize damage to soil, watersheds, vegetation, or other resources (36 CFR 295.2(b)(1)).*

• Minimize soil erosion and compaction of soils resulting in loss of soil productivity and sedimentation to waterways.

• Minimize disturbance and sedimentation to riparian areas, wetlands, and waterways adversely impacting fish, amphibians, and wildlife.

• Minimize spread of invasive, non-native, and noxious weeds along travel routes.

• Minimize disturbance, displacement of artifacts, destruction, and malicious access (including theft) to historic and archaeological sites.

• Prevent the creation of additional routes in environmentally sensitive areas.

• *Minimize harassment of wildlife or significant disruption of wildlife habitat (36 CFR 295.2(b)(2)).*

• Minimize disturbance and impacts to wildlife and botanical resources.

• *Minimize conflicts between off-highway vehicle use and other existing or proposed recreational uses of the same or neighboring public lands (36 CFR 295.2(b)(3)).*

• Balance recreational uses, including campers, hunters, anglers, hikers, mountain biking, equestrians, wildlife viewers, photographers, and motorized OHV users, to minimize conflicts.

• Minimize conflicts between motorized OHV use and other forest permittees (e.g., recreation residences, range permittees, campground concessionaires, outfitters, and guides).

• *Ensure the compatibility of OHV use with existing conditions in populated areas, taking into account noise and other factors (36 CFR 295.2(b)(3)).*

• Minimize adverse impacts to air quality (e.g., dust and exhaust).

• Minimize conflict between OHV use and private landowners (e.g., trespass, noise, dust, exhaust, vandalism).

Compliance with standards and guidelines in the Eldorado National Forest Land and Resource Management Plan as amended by the Sierra Nevada Forest Plan Amendment, January 2004 (Numerous standards and guidelines apply to the designation and use of OHV routes. However, the following standards and guidelines are those directly applicable to the purpose and need for this proposal).

• Prohibit wheeled vehicle travel off of designated roads, trails, and limited OHV use areas (SNFPA ROD, Standard and Guideline 69, page 59).

• Maintenance level 2 forest roads will generally be designated as open to green sticker OHV use unless adverse environmental impacts or conflicts with other uses are identified (ENF LRMP, Management Practice 27, page 4–83).

• Selected maintenance level 1 forest roads (currently blocked) may be designated for OHV use if such use is not found to be in conflict with the original reason for closing the road ENF LRMP, Management Practice 27, page 4–83).

• Selected maintenance level 3, 4, and 5 Forest roads may be considered for combined use designation where their use would enhance opportunities for OHVs and would not conflict with other uses or resource considerations (ENF LRMP, Management Practice, page 4–83).

• In each deer herd winter range and fawning areas, motorized trails will be limited to an average of 2.5 miles per square mile. Open roads will be limited to an average of 2.5 miles per square mile (ENF LRMP, Management Practice 27, page 4–84).

• A closure plan will be instituted for motorized use, during wet weather periods to reduce damage to native surface trails. The plan will allow for trails to be open when soil conditions permit (ENF LRMP, Management Practice 27, page 4–84).

• Stabilize the surface of roads available for all weather use (ENF LRMP, Management Practice 102, page 4–107). Confine use to the dry seasons except on stabilized roads and trails (ENF LRMP, Management Practice 27, page 4–288).

• Roads and trails for which required rights-of-way do not exist and those located predominantly on private land will not be designated for OHV use * * * (ENF LRMP, Management Practice 27, page 4–84).

Consistency With the Memorandum of Intent Between the USDA Forest Service and the California Off-Highway Motor Vehicle Recreation Commission, and the Off-Highway Motor Vehicle Recreation Division of the California Department of Parks and Recreation

• Designate OHV roads, trails, and specifically defined open areas for motorized wheeled vehicles on maps of the 19 National Forests in California.

• Improve management of OHV use on National Forest System lands in California by accomplishing the following: ''* * * (3) designate trails, roads, and specifically defined open areas for OHV use; (4) develop Forest Orders to protect natural resources and aid law enforcement.* * *''

Compliance With the United States District Court for the Eastern District of California (Case CIV–S–02–0325 LKK/JFM, August 16, 2005, Senior Judge Lawrence K. Karlton)

• Issue a Final Environmental Impact Statement and Record of Decision on a new ENF OHV Plan to be consistent with regional guidelines for OHV route designation, with new national OHV regulations which the Forest Service expects will be promulgated later this year, and with the requirements of the National Environmental Policy Act and the National Forest Management Act.

Additional Purpose and Needs Identified from Public Input

• Provide for a safe and sustainable variety of OHV access and opportunities. Ensure a balance of 4X4, ATV, and motorcycle routes.

• Provide motorized access to heavily used and traditional dispersed sites and destinations.

• Consider designating existing non-system routes that create loops, thru-routes, and/or bypass sensitive areas.

• Review and evaluate previous decisions of OHV road closures and restrictions.

• Review and evaluate the current assignment of maintenance levels of system roads, and modify where appropriate.

Proposed Action

The Eldorado National Forest Supervisor proposes to designate National Forest System maintenance level 1 roads (''closed to vehicular traffic''), maintenance level 2 roads (''open for use by high clearance vehicles''), and system motorized trails open to specific types of public off-highway wheeled motor vehicle use and for season of use. Eldorado National Forest maintenance level 3, 4, and 5 system roads subject to the Federal Highway Safety Act are currently designated open to highway legal vehicles. The Forest Supervisor will not propose to redesignate these roads for off-highway wheeled motor vehicles; however, portions of these roads may be designated for combined use of highway legal and off-highway wheeled motor vehicles. The Forest Supervisor will also consider non-system motor vehicle routes in the current route inventory for designation as system roads or trails or specific types of public off-highway wheeled motor vehicle use and for season of use. Entire roads or road segments may be added to the road system or assigned a dual designation as

a National Forest System trail. This proposal specifically considers:

- Approximately 590 miles of maintenance level 1 roads to be designated as system trails for ATVs and/or motorcycles.
- Approximately 990 miles of maintenance level 2 roads to be designated for 4×4s, ATVs, and/or motorcycles.
- Approximately 130 miles of native surface maintenance level 3 roads to be reassigned as maintenance level 2 roads for 4×4x, ATVs, and/or motorcycles.
- Approximately 3 miles of maintenance level 3, 4, 5 roads to be designated for combined use of highway legal and off-highway wheeled motor vehicles.
- Approximately 136 miles of system motorized trails to be designated for ATVs and/or motorcycles.
- Approximately 11 miles of non-system routes in the current route inventory to be designated as maintenance level 2 roads for 4×4s, ATVs, and/or motorcycles.
- Approximately 3 miles of non-system routes in the current route inventory to be designated as system trails for ATVs and/or motorcycles.

All routes designated for public off-highway wheeled motor vehicle use will meet the standards and guidelines in the ENF LRMP as amended by the SNFPA. All native surface routes designated for public off-highway wheeled motor vehicle use will be closed from November 1 to May 1 each year. Inventoried routes not selected for designation for public off-highway wheeled motor vehicle use will be closed to public wheeled motor vehicles year round. The Rock Creek multi-use trail area on the Eldorado National Forest is not affected by this decision and is outside the scope of the project. Travel off of designated routes will be prohibited. Such designations and restrictions will be implemented by a issuing a forest order, pursuant to 36 CFR 261.

This proposal involves the designation of routes only and in no way authorizes any ground disturbing activities, including: (1) The construction of new routes; (2) the deconstruction or decommissioning of inventoried routes; (3) the reconstruction of road or trails; (4) the construction of trailheads, staging areas, or parking areas; (5) the installation of gates or barriers; (6) restoration/rehabilitation projects; or (7) wheeled motor vehicle use of dispersed camping sites.

The following uses are not affected by this decision and are outside the scope of the project: (1) Highway legal (non-green sticker) vehicle use of National Forest System roads subject to the Federal Highway Safety Act, as well as state and county roads; (2) snowmobiles; (3) aircraft; (4) watercraft; (5) non-motorized uses (e.g. hiking, equestrian, mountain bikes); (6) search and rescue operations; (7) firefighting operations and other emergency incident operations; (8) law enforcement operations; (9) special events (event only trails); (10) permitted uses (e.g. woodcutting, livestock herding/fence maintenance); (11) administrative access; (12) government contractors (e.g. timber, construction, and service contractors); and Homeland Security and Defense Department operations; (13) access by wheelchairs (motorized or non-motorized); (14) legal ingress and egress to private land; (15) RS 2477 claims and processes; (16) the Rock Creek multi-use trail area (under separate EIS and supplement); (17) the designation of inventoried roadless areas or proposed wilderness additions; and (18) changes to ENF LRMP land-use allocations.

Responsible Official

John D. Berry, Forest Supervisor, Eldorado National Forest, 100 Forni Road, Placerville, CA 95667.

Nature of Decision To Be Made

The responsible official will decide whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to designate a portion of the inventoried routes on the Eldorado National Forest open to public off-highway wheeled motor vehicle use, and assign the type of use(s) and season of use allowed on each road and trail or portion thereof. Inventoried routes not selected for designation for public off-highway wheeled motor vehicle use will be closed to all wheeled motor vehicles year round. The Rock Creek multi-use trail area on the Eldorado National Forest is not affected by this decision and is outside the scope of the project. Travel off of designated routes will be prohibited. Such designations and restrictions will be implemented by a issuing a forest order (pursuant to 36 CFR 261).

Scoping Process

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from the Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

The Notice of Intent is expected to be published in the **Federal Register** on October 29, 2005. The comment period on the proposed action will extend 30 days from the date the Notice of Intent is published in the **Federal Register**.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June 2006. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will extend 45 days from the date the EPA notice appears in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. It is very important that those interested in the management of the Eldorado National Forest participate at that time.

The final EIS is scheduled to be completed in October 2006. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding route designation. Substantive comments are defined as ''comments within the scope of the proposed action, specific to the proposed action, and have a direct relationship to the proposed action, and include supporting reasons for the Responsible Official to consider'' (36 CFR 215.2). Submission of substantive comments is a prerequisite for eligibility to appeal under the 36 CFR part 215 regulations.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft supplemental environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft supplemental environmental impact statement stage but that are not raised until after completion of the final supplemental environmental impact statement may be waived or dismissed

by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplemental environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposed and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: October 20, 2005.

John D. Berry,

Forest Supervisor.

[FR Doc. 05–21340 Filed 10–25–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region; Grand Mesa, Uncompahgre and Gunnison National Forest; Mesa County, CO; Hunter Reservoir Expansion Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In order to provide additional water storage capacity for a growing population in the Grand Junction Area, Ute Water Conservancy District (UWCD) is proposing to enlarge Hunter Reservoir while also addressing dam safety issues. The existing reservoir is 16 surface acres. The proposed expanded reservoir would be approximately 80 surface acres.

DATES: Comments concerning the scope of the analysis must be received by November 28, 2005. The draft environmental impact statement is expected in March 2006 and the final environmental impact statement is expected in September 2006.

ADDRESSES: Send written comments to Hunter Reservoir Project, Grand Valley Ranger district, 2777 Crossroads Blvd, Unit 1, Grand Junction, Colorado 81506.

FOR FURTHER INFORMATION CONTACT: Carrie Surber, Team leader at *csurber@fs.fed.us* or (970) 242–8211.

SUPPLEMENTARY INFORMATION: Ute Water Conservancy District (UWCD) has decreed water rights for 110 acre-feet (AF) of storage in Hunter Reservoir located near the headwaters of Leon Creek. Leon Creek is located on the northern slopes of the Grand Mesa, a prominent geologic feature in Mesa, Delta and Gunnison Counties in western Colorado. The Hunter Reservoir project location is located approximately 11 miles south of Vega Reservoir in Section 27, T. 11 S., R. 93 W. Sixth Principle Meridian, Mesa County, Colorado.

UWCD also has conditional rights to store 582.5 AF more water at the Hunter Reservoir location. In addition to the Hunter Reservoir water rights, UWCD have conditional water rights for 5,650 AF of storage at a Big Park site, also in the Leon Creek drainage basin downstream of Hunter Reservoir. UWCD has determined that a new dam at the Big Park site would not be economically feasible for the volume of water they would be allowed to store. UWCD desires to perfect its Big Park conditional water rights at the Hunter Reservoir location by enlarging the existing dam and reservoir.

Irrespective of UWCD's storage and conditional water right desires, the Colorado Dam Safety Engineer is requiring UWCD to make structural improvements to the existing Hunter Reservoir dam in order to keep using that facility to store water.

UWCD would like to address both of these aspects of their water facility's management and responsibilities by enlarging the dam at Hunter Reservoir to both rectify dam safety concerns and put their conditional water rights to beneficial use.

The U.S.D.A Forest Service and the Army Corps of Engineers, as a requested cooperating agency, will prepare an Environmental Impact Statement (EIS) addressing the environmental consequences associated with rehabilitating the dam and enlarging the reservoir at the Hunter Reservoir location.

Purpose and Need for Action

The purpose of the proposed action is to bring the Hunter Reservoir dam into compliance with Colorado Dam Safety requirements and to enlarge the storage capacity of the reservoir so that UWCD can make beneficial use of its existing and conditional water rights in the Leon Creek drainage basin.

The need for this combined action is to afford UWCD the ability to address both the dam safety and water right use aspects of their water facilities management and responsibilities in a manner that is environmentally, economically, and technically sound.

The dam safety issues at Hunter Reservoir go back as far as 1964 when state inspection reports began to identify safety concerns at the existing dam. These 1964 concerns and others have continued to worsen to the extent that actions to rectify dam safety problems must be addressed by UWCD to continue operations at Hunter Reservoir.

UWCD needs include providing a continued supply of water to meet the public needs for a service area that is experiencing continued and rapid growth. As a public utility, UWCD has a responsibility to operate and manage its facilities with respect to feature demand with sound environmental and economic management.

This proposed action will also meet the intent of the 2004 Memorandum of Understanding (MOU) between the Rocky Mountain Region of the Forest Service and the State of Colorado, which states, in part, that the State and Forest Service agree to explore creative ways to assure continued operation of water use facilities on NFS lands while protecting aquatic resources, that conflicts are best avoided by careful advance planning and a spirit of cooperation, and that reauthorization of existing water facilities will be done in cooperation and collaboration with the holders of the permits and with other parties such as local governments, tribes, and state and federal agencies, as appropriate.

Proposed Action

The proposed action is to authorize Ute Water Conservancy District (UWCD) to enlarge Hunter Reservoir and rehabilitate the dam to address safety issues. The construction necessary to accomplish these actions is expected to take two summer seasons due to the high elevation of the Hunter Reservoir site. UWCD would like to begin construction in the summer of 2007 and anticipates completion at the end of the summer in 2008.

Dam reconstruction will be done by raising the dam height to 26 feet, installing new outlet works, widening the crest of the dam, install new service and emergency spillways, rock rip-rapping the dam embankments, and installing a seepage curtain at the foot of the dam toe. These actions would increase storage capacity, improve flood surge capacity, and eliminate fill instability. These actions are expected to bring the reservoir into compliance with the Colorado State Engineer's Office for dam safety requirements.

Road improvements would be needed on Forest Roads 262 and 280 to facilitate access by construction crews and to bring materials to the construction site. Both FR 262 and 280 are high-clearance roads not designed for passenger car travel. The type of improvements envisioned for these access roads would include, but not limited to, grading, leveling, stabilize and improve stream crossings, relocation out of wetland areas, stabilize erosion from road runoff, and gravel surfacing. Even with the anticipated road improvements it is unlikely that neither of these Forest Roads would be deemed suitable for passenger car travel, but would facilitate truck traffic necessary to move crews and materials into the site.

Most earthen materials needed for construction would be obtained on site. Rock riprap would come from a rockslide area at the site. Dam embankment material would come from spillway construction and blanket cutoff construction. Road surface gravels and filter drain materials (crushed rock) as well as cement would be delivered to the site. Concrete would be mixed and poured on site.

Possible Alternatives

Alternative 1: See proposed action above.

Alternative 2: Under this alternative only dam safety issues would be corrected and Hunter Reservoir would not be enlarged.

Alternative 3: A new storage facility would be constructed at another site within the Leon Creek drainage basin or some other adjacent drainage nearby.

Alternative 4: (No action) Under this alternative, Hunter Reservoir would not be enlarged nor dam safety issues corrected. This alternative is required by NEPA to be presented as a baseline to consider the environmental effects of action alternatives. In the event the action alternatives were found to be unacceptable, this alternative could be selected.

Lead and Cooperating Agencies

Lead Agency—USDA, Forest Service, Grand Mesa , Uncompahgre and Gunnison National Forest.

Cooperating Agency—U.S. Army Corps of Engineers, Sacramento District, Colorado/Gunnison Basin Regional Office has been requested to participate as a cooperating agency.

Responsible Official

The Responsible Official is Charles Richmond, Forest Supervisor, Grand Mesa, Uncompahgre, and Gunnison National Forests, 2250 South Highway 50, Delta, Colorado 81416.

Nature of Decision To Be Made

Given the purpose and need, the Forest Supervisor will review the proposed action, other alternatives and mitigation measures in order to make the following decisions:

- Whether or not to authorize the enlargement of Hunter Reservoir and conduct road reconstruction and other support activities to meet the stated purpose.
- If an action alternative is selected, under what conditions and by which methods reservoir enlargement and associated activities would be conducted.

The Federal Land Policy and Management Act gives the Forest Service the authority to issue or deny authorizations for water storage facilities. The Forest Service is also required to protect and manage natural resources.

Scoping Process

Initial scoping was conducted for this proposal during August 2005. Letters inviting comments on the proposal were sent to parties known to be interested. A news release was issued and published in the Grand Junction Daily Sentinel on Saturday May 28, 2005. Also, a legal notice was run in that same newspaper on Friday May 27, 2005. Seven letters were received in response. An initial set of issues, listed below, were identified from reading the response to scoping, from working with federal agencies, including the Corps of Engineers, and from Forest Service and consultant analysis.

Preliminary Issues

The following issues have been identified as preliminary issues to be carried through the analysis:

Wetlands: Based on wetland delineation by WestWater Engineering in October 2005, the following wetland classification categories will be below high water elevation of the proposed enlarged reservoir: approximately 32 acres of wetlands, 6 acres of littoral zone, and 14 acres of existing unvegetated reservoir bottom. The total acres of wetlands to be inundated are about 38 acres. Some of these wetlands have the characteristics of peat forming wetlands, which could be fens. Fens in these southern regions of the Rocky Mountains are considered rare and unique because of the plant communities often associated with such wetlands.

Soils and Water Resources: The access road will require grading, leveling and has 28 stream or wetland crossings. Leon Creek would be diverted during dam reconstruction activities and there would be temporary increases in sedimentation and erosion downstream in Leon Creek. On-site soils would be used for dam construction material.

Recreation: Proposed project activities could cause increased recreation at the reservoir and to the Hunter Reservoir area because of the improved access conditions and the attraction of a larger reservoir. Improved access could also change the recreational opportunity spectrum for the area.

Threatened/Endanged/Sensitive(TES) Species, Wildlife and Vegetation: Proposed project activities could affect existing vegetation and wildlife habitat, including TES such as Canada lynx, boreal toad and bald eagle.

Fisheries: Proposed project activities, especially during construction, could affect existing fisheries in the reservoir and Leon Creek. The long-term effects on downstream fisheries and in-lake fisheries have the potential to improve because there could be decreased potential for winter-kill in the reservoir and if in-stream flow provisions can be incorporated into the reservoir operations.

Transportation: Proposed project activities could affect National Forest System Roads. NFSR 280 and 262 are currently rough four-wheel drive roads that will need to be upgraded to allow access for crews, equipment and materials. Even with improvements, it is unlikely passenger cars could access Hunter Reservoir. Lack of annual maintenance would allow these roads to degrade to current conditions.

Range: Proposed project activities could affect grazing capacity in the Leon Creek Grazing Allotment. More water would be available over a longer period if the proposed action is approved but there would be a loss of wetland grasses and forbs that are currently utilized as forage for livestock.

Other issues may be identified through the scoping process.

Permits or Licenses Required

Department of the Army Permit (404 permit) for dam fill. Obtained by the U.S. Army Corps of Engineers.

Special Use Permit from the U.S. Forest Service.

Comments Requested

This notice of intent initiates the scoping process that guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear *Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of *Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris,* 409 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at the time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 18, 2005.

Charles S. Richmond,

Forest Supervisor.

[FR Doc. 05–21335 Filed 10–25–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Umatilla National Forest, Columbia and Garfield Counties, WA School Fire Salvage Recovery Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose environmental effects on a proposed action to recover the economic value of dead and dying trees damaged in the School Fire, and remove potential hazard trees from open forest travel routes, developed recreation sites, and administrative sites within North Patit Creek, Little Tucannon River, Cummings Creek, Tumalum Creek, Headwaters of Tucannon River, and Pataha Creek subwatersheds. School Fire, located 12 miles south of Pomeroy, Washington, burned approximately 52,000 acres across mixed ownership in August 2005, of that approximately 27,000 acres were on National Forest System Lands administered by Pomeroy Ranger District, Umatilla National Forest.

DATES: Comments concerning the scope of the analysis must be received by November 28, 2005. The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available to the public for review by April 2006. The Final EIS is scheduled to be completed by July 2006.

ADDRESSES: Send written comments to the Responsible Official, Kevin D. Martin, Forest Supervisor, Umatilla National Forest, 2517 S.W. Hailey Avenue, Pendleton, OR 97801. Send electronic comments to: *comments-pacificnorthwest-umatilla@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Dean Millett, Project Team Leader, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347, phone (509) 843–1891. e-mail: *dmillett@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Purpose and Need. The purpose and need of the School Fires Salvage Recovery Project includes: (1) Recovery of the economic value of a portion of dead and dying trees consistent with protection of other resource values; and (2) Improving public safety within the fire area by removing potential hazard trees along open forest travel routes, developed recreation sites, and administrative sites.

Proposed Action. This action includes salvage of dead and dying trees from approximately 10,000 acres and removal of potential hazard trees for public safety along open forest travel routes, developed recreation sites, and administrative sites. Salvage harvest methods would include ground based, skyline, and helicopter yarding systems. Ground based systems would not be used on sustained slopes greater than 30 percent. To facilitate haul some existing classified roads would be reconstructed and about 15 miles of temporary roads would be constructed. No new classified road construction is proposed and all temporary roads would be closed or decommissioned after project activities are completed. No commercial harvest or road construction is proposed within the Willow Spring Inventoried Roadless Area. Tree planting is proposed in salvage harvest areas where there is insufficient seed source to ensure natural regeneration in a timely manner. Some areas would have sub-merchantable trees felled prior to planting, and these areas would be broadcast burned to reduce excessive fuel loading before planting. Forest Plan amendments would be included as needed.

Possible Alternatives. Alternatives will include the proposed action, no action, and additional alternatives that respond to issues generated during the scoping process. The agency will give notice of the full environmental analysis and decision-making process so interested and affected people may participate and contribute to the final decision.

Scoping. Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). Initial scoping began with the project listed in the 2005 Fall Edition of the Umatilla

National Forest's Schedule of Proposed Actions. Two informational field trips were conducted on October 18 and October 25, 2005. A public meeting will be scheduled for November 2005, to discuss the project. Other meetings will be scheduled as needed. Also, correspondence with tribes, government agencies, organizations, and individuals who have indicated their interest will be conducted.

Preliminary Issues. Preliminary issues identified include the potential effect of the proposed action on: soils, water quality and fish habitat, snags and down wood, disturbance to cultural resources, potential for noxious weed expansion, threatened, endangered and sensitive aquatic, terrestrial and plant species, potential loss of economic value of trees damaged by the wildfire, and the safety and use of the area by public and land managers.

Comment. Public comments about this proposal are requested to identify issues and alternatives to the proposed action and to focus the scope of the analysis. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action, and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decisions under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied; the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review. A draft EIS will be filed with the Environmental Protection Agency (EPA) and made available for public review by April 2006. The EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register**. The final EIS is scheduled to be available July 2006.

The Forest Service believes at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553* (1978). Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Forest Service is the lead agency and the responsible official is the Forest Supervisor, Umatilla National Forest. The responsible official will decide where, and whether or not to salvage timber, and remove potential hazard trees. The responsible official will also decide how to mitigate effects of these actions and will determine when and how monitoring of effects will take place. The School Fire Salvage Recovery Project decision and reasons for the decision will be documented in a record of decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: October 20, 2005.

Edwin V. Pugh,

Acting Forest Supervisor.

[FR Doc. 05–21339 Filed 10–25–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this constitutes notice of the upcoming meeting of the Grain Inspection Advisory Committee (''the Committee'').

DATES: November 1, 2005, 7:30 a.m. to 5 p.m.; and November 2, 2005, 7:30 a.m. to Noon.

ADDRESSES: The Advisory Committee meeting will take place at the Omni Corpus Christi Hotel Bayfront and Marina, 900 North Shoreline Boulevard, Corpus Christi, Texas 78401.

Requests to address the Committee at the meeting or written comments may be sent to: Deputy Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3604, Washington, DC 20250–3614. Requests and comments may also be faxed to (202) 690–2755.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Henry, (202) 205–8281 (telephone); (202) 690–2755 (facsimile).

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda will include a status report on the reauthorization of the U.S. Grain Standards Act, financial update of grain inspection user fee programs, progress report on re-engineering of domestic operations, overview of standards and future plans, and other general Agency issues.

For a copy of the agenda please contact Terri Henry, (202) 205–8281 (telephone); (202) 690–2755 (facsimile) or by e-mail *Terri.L.Henry@usda.gov*.

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri Henry, at the telephone number listed above.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 05–21345 Filed 10–25–05; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: BISNIS Publication Subscription Form.

Agency Form Number: N/A.

OMB Number: 0625–0236.

Type of Request: Regular Submission.

Burden: 170.

Number of Respondents: 2,000.

Avg. Hours Per Response: 5 minutes.

Needs and Uses: The International Trade Administration's (ITA) Business Information Service for the Newly Independent States (BISNIS) offers business intelligence and counseling to U.S. companies seeking to export or to invest in the countries of the Former Soviet Union. A critical component of the program is the dissemination of information regarding market conditions and opportunities in various industries and countries of the former Soviet Union. These information products provided by BISNIS are in the form of e-mails, faxes, and paper mailers. The Publication Subscription Form is a quick way for interested parties to tell BISNIS which products they want and their industry and country interests.

Affected Public: Business or other for-profits.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230. Email: *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, *David_Rostker@omb.eop.gov* or fax at (202) 395–7285 within 30 days of publication of this **Federal Register** notice.

Dated: October 20, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–21328 Filed 10–25–05; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Census Bureau

2007 Economic Census Classification Report for Construction, Manufacturing, and Mining Sectors

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 27, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Scott P. Handmaker, U.S. Census Bureau, Room 1656, Building 3, Washington, DC 20233, and 301–763–7107 or e-mail at *Scott.P.Handmaker@census.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during non-decennial census years. The economic census, conducted under authority of Title 13 U.S.C., is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public.

Prior to conducting the 2007 Economic Census, the Census Bureau needs to collect a North American Industry Classification System (NAICS) code from selected construction establishments. Those establishments selected have a partially assigned NAICS code on the Census Bureau's Business Register. Collecting this classification information will ensure the Economic Census mailing list for the construction sector is complete and accurate prior to the mailing of the 2007 Economic Census. As a result of this collection, the Census Bureau will be able to select an efficient sample, thus minimizing the reporting burden that we impose on construction establishments.

Additionally, this questionnaire will be used to collect a complete and reliable NAICS code for partially classified manufacturing and mining establishments. This will ensure these establishments are tabulated in the correct detailed industry for the 2007 Economic Census. Many of these establishments will not receive any further economic census mailings because of their small size, and this will be our only chance to obtain this detailed industry classification. Economic data for these cases could be lost if this data were not collected.

The failure to collect this classification information will have an adverse effect on the quality and usefulness of economic statistics and severely hamper the Census Bureau's ability to effectively classify establishments under NAICS in the Economic Census and other survey programs.

The Census Bureau is not requesting any economic data in this collection. The collection of this NAICS information will greatly reduce processing costs and ease reporting burden for the 2007 Economic Census data collection.

II. Method of Collection

The Census Bureau will select establishments to receive this survey from the Census Bureau's Business Register. The Census Bureau will mail the NC–99026 to those establishments from the following groups: (1) Any single unit construction establishment that is partially coded, (2) any single

unit manufacturing establishment that is partially coded, or (3) any single unit mining establishment that is partially coded. The NC-99026 will be used to assign a valid NAICS code.

The NC–99026 will contain a list of codes and descriptions describing either diverse construction, manufacturing, or mining activities. Respondents check the box that best describes their business activity or describe their business activity if no box is appropriate.

III. Data

OMB Number: Not Available.

Form Number: NC–99026.

Type of Review: Regular Review.

Affected Public: Businesses or Other for Profit Institutions, Small Businesses or Organizations, Non-profit Institutions, State or Local Governments.

Estimated Number of Respondents: 50,000.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 4,167.

Estimated Total Annual Cost: $101,716.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C., Sections, 131 and 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 20, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–21327 Filed 10–25–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 51–2005]

Foreign–Trade Zone 202- Los Angeles, California, Request for Processing Authority, Citizen Watch Company of America, Inc. (Watches)

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Port of Los Angeles, California, grantee of FTZ 202, requesting authority on behalf of Citizen Watch Company of America, Inc. (Citizen) for the processing and packaging of watches under FTZ procedures within Site 7 of FTZ 202 in Torrance, California. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 Cfr part 400). It was formally filed on October 19, 2005.

Citizen operates a distribution facility (182 employees) for the warehousing, packaging and distribution of watches. The company's application indicates that the duty rates for finished watches range from duty–free to 6 percent (ad valorem equivalent). Foreign–sourced inputs include imported gift boxes, watch bands, watch cases and other materials with duty rates ranging from duty–free to 20 percent.

This application requests authority to allow Citizen to conduct activities under FTZ procedures, which would exempt the company from Customs duty payments on the foreign components used in export activity. On its domestic sales, the company would be able to choose the duty rate that applies to finished products for the foreign components noted above. Citizen's application indicates that the savings from zone procedures could help improve the company's international competitiveness.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. *Submission Via Express/Package Delivery Services*: Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building - Suite 4100W, 1099 14th St., NW, Washington, DC 20005; or

2. *Submission Via the U.S. Postage Service*: Foreign–Trade Zones Board, U.S. Department of Commerce, FCB - Suite 4100W, 1401 Constitution Ave., NW, Washington, DC 20230.

The closing period for their receipt is December 27, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 9, 2006.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the Department of Commerce Export Assistance Center, 11150 West Olympic Blvd., Suite 975, Los Angeles, CA 90064.

Dated: October 19, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–21386 Filed 10–25–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 52–2005]

Proposed Foreign–Trade Zone - Lawrence County, Ohio, Application and Public Hearing

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board) by the Lawrence County Port Authority, an Ohio public corporation, to establish a general–purpose foreign–trade zone at a site in Lawrence County, Ohio, adjacent to the Charleston, West Virginia, Customs port of entry. The FTZ application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 20, 2005. The applicant is authorized to make the proposal under Ohio Revised Code Section 1743.11.

The proposed zone would be the third general–purpose zone in the Charleston, West Virginia, Customs port of entry area. The existing zones are as follows: FTZ 229, Charleston,West Virginia (Grantee: West Virginia Economic Development Authority, Board Order 954, 02/13/98) and FTZ 264, Washington County, Ohio (Grantee: Southeastern Ohio Port Authority, Board Order 1392, 6/24/05).

The proposed zone consists of one site (422 acres), located in Lawrence County, Ohio. The site is located at the Point Industrial Park, U.S. Route ι52 and County Road 1, Lawrence County, Ohio. The site is owned by Lawrence Economic Development Corporation, Biomass Energy LLC and M&M Service, Inc.

The application indicates a need for zone services in the Lawrence County, Ohio, area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on November 17, 2005, at 2 p.m., SouthPoint Community Center, 404 Second Street West, South Point, Ohio.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses below:

1. *Submissions via Express/Package Delivery Services*: Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099 14th Street, NW, Washington, DC 20005; or

2. *Submissions via U.S. Postal Service*: Foreign–Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Avenue, NW, Washington, DC 20230.

The closing period for their receipt is December 27, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 9, 2006).

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at address No. 1 listed above and the Lawrence Economic Development Corporation, 216 Collins Avenue, South Point, Ohio 45680.

Dated: October 20, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–21387 Filed 10–25–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China; Initiation of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 26, 2005.

SUMMARY: The Department of Commerce (the ''Department'') has determined that a request for a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China (''PRC''), received in May 2005, meets the statutory and regulatory requirements for initiation. The period of review (''POR'') of this new shipper review is November 1, 2004, through April 30, 2005.

FOR FURTHER INFORMATION CONTACT: Ryan A. Douglas or Wendy Frankel, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1277 and (202) 482–5849, respectively.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on fresh garlic from the PRC was published on November 16, 1994. *See Antidumping Duty Order: Fresh Garlic From the People's Republic of China*, 59 FR 59209 (November 16, 1994). On May 17, 2005, we received a timely request for a new shipper review from Anqiu Friend Food Co., Ltd. (''Anqiu Friend'') in accordance with 19 CFR 351.214(d)(2). Anqiu Friend has certified that it grew and exported the garlic on which it based its request for a new shipper review. The Department initially denied Anqiu Friend's request for a new shipper review in this case. However, as a result of litigation and agreement with the requester, the Department has reconsidered its decision and is now initiating the new shipper review.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.214(b)(2), Anqiu Friend certified that it did not export fresh garlic to the United States during the period of investigation (''POI''). Pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Anqiu Friend certified that, since the initiation of the investigation, it has never been affiliated with any exporter or grower who exported fresh garlic to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Anqiu Friend also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, the exporter submitted documentation establishing the following: (1) the date on which it first shipped fresh garlic for export to the United States and the date on which the fresh garlic was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment and the volume of subsequent shipments; and (3) the date of its first sale to an unaffiliated customer in the United States.

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we are initiating this new shipper review for shipments of fresh garlic from the PRC grown and exported by Anqiu Friend. *See* Memorandum to the File through Wendy Frankel, ''New Shipper Initiation Checklist,'' dated October 12, 2005.

The POR is November 1, 2004, through April 30, 2005. *See* 19 CFR 351.214(g)(1)(i)(B). We intend to issue preliminary results of these reviews no later than 180 days from the date of initiation, and final results of these reviews no later than 270 days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

Because Anqiu Friend has certified that it grew and exported the fresh garlic on which it based its request for a new shipper review, we will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of fresh garlic both grown and exported by Anqiu Friend until the completion of the new shipper review, pursuant to section 751(a)(2)(B)(iii) of the Act. Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: October 20, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–5951 Filed 10–25–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished From The People's Republic of China: Notice of Partial Rescission of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, and Sept 12, 2005, respectively, Yantai Timken Company Limited (''Yantai Timken'') and Wanxiang Group Company (''Wanxiang'') withdrew their requests for administrative review. Accordingly, because no other party requested a review for either company, we are rescinding, in accordance with 19 CFR 351.213(d)(1), the administrative review of sales of tapered roller bearings and parts thereof, finished or unfinished (''TRBs'') from The People's Republic of China (''PRC'') for the period covering June 1, 2004 through May 31, 2005, for Yantai Timken and Wanxiang.

EFFECTIVE DATE: October 26, 2005.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Hua Lu, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4243 and (202) 482–6478, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1987, the Department published in the **Federal Register** the antidumping duty order on TRBs from PRC. *See Antidumping Duty Order: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China*, 52 FR 22667 (June 15, 1987). On June 1, 2005, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on TRBs from the PRC for the period June 1, 2004, through May 31, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 70 FR 31422 (June 1, 2005). On June 30, 2005, Yantai Timken and Wanxiang requested administrative reviews of their sales to the United States during the period of review (''POR''). No other party requested an administrative review of Yantai Timken or Wanxiang for this time period. On July 21, 2005, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of TRBs from the PRC for the 2004–2005 POR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 30694 (May 27, 2005) (''*Initiation Notice*'').[1] Wanxiang withdrew its request for review on July 1, 2005 and on September 12, 2005, Yantai Timken withdrew its request for review.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of requested review. Yantai Timken and Wanxiang withdrew their respective requests for review within the 90-day time limit and no other party requested a review with respect to either Yantai Timken or Wanxiang. Accordingly, we are rescinding this administrative review of the sales in the United States made by Yantai Timken and Wanxiang and will issue appropriate assessment instructions to U.S. Customs and Border Protection.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4) of the Department's regulations.

[1] The initiation notice inadvertently failed to include Wanxiang in the list of companies covered by the review. On August 29, 2005, the Department issued an amendment to its July 21, 2005, *Initiation Notice*, including Wanxiang in the 2004-2005 review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009, 51010 (August 29, 2005).

Dated: October 20, 2005.

Gary Taverman,

Acting Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E5–5950 Filed 10–25–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy: Notice of Partial Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request made on July 29, 2005, by Moline e Pastificio Tomasello S.r.L., the Department of Commerce initiated an administrative review of the countervailing duty order on certain pasta from Italy, covering the period January 1, 2004, through December 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009 (August 29, 2005). As a result of a timely withdrawal of the request for review by Moline e Pastificio Tomasello S.r.L., we are rescinding this review, in part.

EFFECTIVE DATE: October 26, 2005.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Marc Rivitz, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0182 and (202) 482–1382, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department of Commerce (''the Department'') published a countervailing duty order on certain pasta from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy*, 61 FR 38543 (July 24, 1996). On July 29, 2005, Moline e Pastificio Tomasello S.r.L. requested an administrative review of the countervailing duty order on certain pasta from Italy covering the period January 1, 2004, through December 31, 2004. In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on August 29, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests*

for Revocation in Part, 70 FR 51009 (August 29, 2005). On September 29, 2005, Moline e Pastificio Tomasello S.r.L. withdrew its request for review. No other party requested a review for Moline e Pastificio Tomasello S.r.L..

Scope of the Countervailing Duty Order

Imports covered by this order are shipments of certain non–egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.L. In addition, based on publically available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from this order. *See Memorandum from Eric B. Greynolds to Melissa G. Skinner*, dated August 4, 2004, which is on file in the Department's Central Records Unit (''CRU'') in Room B–099 of the main Department building.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

The Department has issued the following scope rulings:

1. On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See Memorandum from Edward Easton to Richard Moreland*, dated August 25, 1997, which is on file in the CRU.

2. On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one–pound packages of pasta that are shrink–wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See Letter from Susan H. Kuhbach to Barbara P. Sidari*, dated July 30, 1998, which is available in the CRU.

3. On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti–circumvention investigation of Barilla S.r.L. (''Barilla''), an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997. *See Initiation of Anti–Circumvention Inquiry on Antidumping Duty Order on Certain Pasta From Italy*, 62 FR 65673 (December 15, 1997). On October 5, 1998, the Department issued its final determination that, pursuant to section 781(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''), circumvention of the antidumping order on pasta from Italy was occurring by reason of exports of bulk pasta from Italy produced by Barilla which subsequently were repackaged in the United States into packages of five pounds or less for sale in the United States. *See Anti–Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

4. On October 26, 1998, the Department self–initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum from John Brinkmann to Richard Moreland*, dated May 24, 1999, which is available in the CRU.

5. On April 27, 2000, the Department self–initiated an anti–circumvention inquiry to determine whether Pastificio Fratelli Pagani S.p.A.'s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti–circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding of the anti–circumvention inquiry. *See Anti–Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

Rescission of Review

The Department's regulations at 351.213(d)(1) provide that the Department will rescind an administrative review, in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Moline e Pastificio Tomasello S.r.L. withdrew its request for an administrative review on September 15, 2005, which is within the 90–day deadline, and no other party requested a review with respect to this company. Therefore, the Department is rescinding this administrative review, in part, for Moline e Pastificio Tomasello S.r.L.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4).

Dated: October 20, 2005.

Gary Taverman,

Acting Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E5–5952 Filed 10–25–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Puerto Rico Highway and Transportation Authority From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of appeal and request for comments.

SUMMARY: This announcement provides notice that the Puerto Rico Highway and Transportation Authority has filed an administrative appeal with the Department of Commerce asking that the Secretary override the Puerto Rico

Planning Board's objection to a consistency certification prepared in conjunction with the proposed reconstruction of a stone revetment and replacement of a bridge at Aguadilla Bay.

DATES: Public and federal agency comments on the appeal are due within 30 days of the publication of this notice.

ADDRESSES: All e-mail comments on issues relevant to the Secretary's decision in this appeal may be submitted to *prhighway.comments@noaa.gov.* Comments may also be sent by mail to Brett Grosko, Attorney-Adviser, Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111 Silver Spring, MD 20910. Materials from the appeal record will be available at the NOAA Office of the General Counsel for Oceanic Services. In addition, public filings made by the parties to the appeal will be available at the office of the Puerto Rico Planning Board.

FOR FURTHER INFORMATION CONTACT: Brett Grosko, Attorney-Adviser, NOAA Office of the General Counsel, 301–713–7384.

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

The Puerto Rico Highway and Transportation Authority (PRHTA) has filed a notice of appeal with the Secretary of Commerce pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*, and implementing regulations found at 15 CFR Part 930, Subpart H. The PRHTA appealed an objection raised by the Puerto Rico Planning Board to a consistency certification contained within its application to the U.S. Army Corps of Engineers for a permit necessary to reconstruct a stone revetment and replace a bridge at Aguadilla Bay.

The Appellant requests that the Secretary override the Puerto Rico Planning Board's consistency objection on the basis that the proposed activity is ''consistent with the objectives'' of the CZMA. To make this determination, the Secretary must find that: (1) The proposed activity furthers the national interest as articulated in section 302 or 303 of the CZMA, in a significant or substantial manner; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of Puerto Rico's management program. 15 CFR 930.121. The Appellant also requests that the Secretary override the Puerto Rico Planning Board's consistency objection on the basis that the proposed activity is necessary in the interest of national security. To reach this conclusion, the Secretary must find that a national defense or other national security interest would be significantly impaired were the activity in question not permitted to go forward as proposed. 15 CFR 930.122.

II. Public and Federal Agency Comments

Written public comments are invited on any of the issues that the Secretary must consider in deciding this appeal. Comments must be received within 30 days of the publication of this notice, and may be submitted by e-mail to *prhighway.comments@noaa.gov.* Comments may also be sent to Brett Grosko, Attorney-Adviser, NOAA Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Comments will be made available to the PRHTA and the Puerto Rico Planning Board.

III. Appeal Documents

NOAA intends to provide the public with access to all materials and related documents comprising the appeal record during business hours, at the NOAA Office of the General Counsel for Ocean Services. In addition, copies of public filings by the parties will be available for review at the offices of the Puerto Rico Planning Board.

For additional information about this appeal contact Brett Grosko, 301–713–7384.

Dated: October 19, 2005.

James R. Walpole,

General Counsel.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

[FR Doc. 05–21384 Filed 10–25–05; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102005A]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council's (NPFMC) Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BS/AI) groundfish plan teams will meet in Seattle.

DATES: The meetings will be held on November 14–18, 2005.

ADDRESSES: The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Bldg. 4, Room 2039 (BS/AI Plan Team) and Room 2076 (GOA Plan Team), Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Diana Stram, NPFMC, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The meetings will begin at 1 p.m. on Monday, November 14, and continue through Friday, November 18.

The Teams will prepare the final Economic Stock Assessment Fishery Evaluation (SAFE) report, Ecosystem chapter, GOA and BSAI Groundfish SAFE reports and recommend Final acceptable biological catch Specifications for 2006/07 Groundfish fisheries.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the NPFMC's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen,

(907) 271–2809, at least 5 working days prior to the meeting date.

Dated: October 20, 2005.

Emily Menashes,

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

[FR Doc. E5–5899 Filed 10–25–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Savannah River. 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: Monday, November 14, 2005, 1 p.m.–6 p.m., Tuesday, November 15, 2005, 8:30 a.m.–4 p.m.

ADDRESSES: Embassy Suites, 5055 International Boulevard, North Charleston, SC 29418.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–7886.

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

Monday, November 14, 2005

1 p.m.—Combined Committee Session.
5:15 p.m.—Executive Committee Meeting.
6 p.m.—Adjourn.

Tuesday, November 15, 2005

8:30 a.m.—Approval of Minutes, Agency Updates.
8:45 a.m.—Public Comment Session.
9 a.m.—Chair and Facilitator Update.
9:30 a.m.—Waste Management Committee Report.
11:30 a.m.—Public Comment Session.
12 p.m.—Lunch Break.
1 p.m.—Administrative Committee Report Bylaws Amendment Proposal.
1:45 p.m.—Facility Disposition and Site Remediation, and Nuclear Materials Committees Reports.
2:15 p.m.—Public Comment Session.
2:30 p.m.—Strategic and Legacy Management Committee Report.
3:30 p.m.—Environmental Justice Initiatives.
4 p.m.—Adjourn.

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, November 14, 2005.

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 Gerri Flemming's office at the address or telephone 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 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 through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC, on October 19, 2005.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. 05–21375 Filed 10–25–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–31–000]

Algonquin Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 19, 2005.

Take notice that on October 14, 2005, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, effective November 14, 2005:

First Revised Sheet No. 570
First Revised Sheet No. 571
First Revised Sheet No. 588

Algonquin states that copies of its filing have been served upon all affected customers of Algonquin and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5910 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–7–000; ER06–36–000]

Aquila, Inc.; Notice of Filing

October 18, 2005.

Take notice that on October 14, 2005, Aquila, Inc. (Aquila) filed an application, pursuant to section 203 of the Federal Power Act, with the Commission for approval of a disposition of jurisdictional transmission facilities to KAMO Electric Cooperative, Inc. and for related required changes to the Agreement for Interchange of Power & Interconnected Operations between Aquila and Associated Electric Cooperative, Inc.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing an intervention or protests on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 4, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5915 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–6–000]

ArcLight Energy Partners Fund I, L.P. Osaka Gas Energy America Corporation; Notice of Filing

October 18, 2005.

Take notice that on October 14, 2005, ArcLight Energy Partners Fund I, L.P. (ArcLight Fund I) and Osaka Gas Energy America Corporation (Osaka) (together, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization for the disposition of jurisdictional facilities related to the transfer of a 20% indirect limited partnership interest in Lakewood Cogeneration Limited Partnership from ArcLight Fund I to Osaka. Applicant states that Lakewood is an exempt wholesale generator that owns a 237 MW generating facility located in Lakewood Township, New Jersey. Applicants have requested confidential treatment of Exhibit I to the Application.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 4, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5914 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–5–000]

Calpine Energy Services, L.P.; Calpine Construction Finance Company, L.P.; Notice of Filing

October 20, 2005.

Take notice that on October 13, 2005, Calpine Energy Services, L.P. and Calpine Construction Finance Company, L.P. submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities in connection with the assignment of a power purchase agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protests must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically

should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 3, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5928 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–4–000]

CenterPoint Energy Gas Transmission Company; Notice of Application

October 18, 2005.

Take notice that on October 11, 2005, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP06–4–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA), for authorization to increase the certificated maximum shut-in reservoir pressure in its Ruston Storage facilities from 2,202 psia to 2,525 psia bottom hole. CEGT's proposal does not require any construction of new facilities or involve any ground disturbance, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director-Rates & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, or call (318) 429–2804.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: November 8, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5919 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–4–000]

CenterPoint Energy Gas Transmission Company; Notice of Application

October 20, 2005.

Take notice that on October 11, 2005, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP06–4–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA), for authorization to increase the certificated maximum shut-in reservoir pressure in its Ruston Storage facilities from 2,202 psia to 2,525 psia bottom hole. CEGT's proposal does not require any construction of new facilities or involve any ground disturbance, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director—Rates & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, or call (318) 429–2804.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888

First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: November 10, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5926 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–37–000]

Cheyenne Plains Gas Pipeline Company LLC; Notice of Proposed Changes in FERC Gas Tariff

October 20, 2005.

Take notice that on October 17, 2005, Cheyenne Plains Gas Pipeline Company L.L.C. (Cheyenne Plains) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective November 17, 2005:

First Revised Sheet No. 222
First Revised Sheet No. 223
First Revised Sheet No. 224
First Revised Sheet No. 225

Cheyenne Plains states that the tariff sheets extend the nomination deadline by fifteen minutes.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5936 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–39–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 20, 2005.

Take notice that on October 17, 2005, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective December 1, 2005:

Thirty-Ninth Revised Sheet No. 11A
Third Revised Sheet No. 230C

CIG states that these tariff sheets propose to establish a no-fuel wheeling area located in the western portion of CIG's system.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the

''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5925 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–35–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 20, 2005.

Take notice that on October 17, 2005, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No 1, the following tariff sheets to become effective December 1, 2005:

Second Revised Sheet No. 226
Thirteenth Revised Sheet Nos. 230A
First Revised Sheet No. 230A.01
Tenth Revised Sheet No. 230B
Fourth Revised Sheet No. 230C
Original Sheet Nos. 380F–380J

CIG states that the tariff sheets are being filed to identify the locations on the CIG system where no fuel charge will be assessed.

CIG states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5934 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–38–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 20, 2005.

Take notice that on October 17, 2005, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective November 17, 2005:

Second Revised Sheet No. 279D
Tenth Revised Sheet No. 280
Tenth Revised Sheet No. 281B
Tenth Revised Sheet No. 281C
Fifth Revised Sheet No. 281D

CIG states that the tariff sheets extend the nomination deadline by fifteen minutes.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5937 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–428–004]

ConocoPhillips Company; Notice of Filing

October 18, 2005.

Take notice that on September 22, 2005, ConocoPhillips Company tendered for filing an amended triennial market power analysis of ConocoPhillips and proposed tariff revisions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 28, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5917 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–068]

Dominion Transmission, Inc.; Notice of Negotiated Rate

October 19, 2005.

Take notice that on October 17, 2005, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective October 18, 2005:

Fifteenth Revised Sheet No. 1300
Eighth Revised Sheet No. 1400

DTI states that the purpose of this filing is to report a continuation of a negotiated rate transaction between DTI and Virginia Power Services Energy Corp., Inc. and to disclose a non-conforming service agreement that materially deviates from DTI's form of service agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5901 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–15–001]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 20, 2005.

Take notice that on October 14, 2005, Garden Banks Gas Pipeline, LLC (Garden Banks) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective November 7, 2005:

Ninth Revised Sheet No. 2
Ninth Revised Sheet No. 57
Third Revised Sheet No. 138
First Revised Sheet No. 139

Garden Banks states it discovered an error in the pagination of certain tariff sheets filed in this proceeding on October 7, 2005. Garden Banks states that it inadvertently erred in filing such sheets, as these sheets had been submitted previously to the Commission in FERC Docket No. RP05–453–000.

Garden Banks states that the purpose of the filing is to correct the pagination errors by tendering in this filing the above-listed tariff sheets. Garden Banks claims it has made no substantive changes to these tariff sheets.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant and all parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5930 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–29–000]

High Island Offshore System, L.L.C.; Notice of Tariff Filing

October 19, 2005.

Take notice that on October 14, 2005, High Island Offshore System, L.L.C. (HIOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifth Revised Sheet No. 173, to become effective November 14, 2005.

HIOS states that the purpose of this filing is to remove the CIG/Granite State policy discount provisions in Section 26 of the General Terms and Conditions of HIOS's tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5909 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–10–000]

Lake Road Holding Company, LLC; Lake Road Generating Company, L.P.; Notice of Filing

October 20, 2005.

Take notice that on October 18, 2005, Lake Road Holding Company, LLC (HoldCo) and Lake Road Generating Company, L.P. (Lake Road Gen) filed with the Federal Energy Regulatory Commission an application requesting that the Commission grant all authorizations and approvals necessary under section 203 of the Federal Power Act for an indirect disposition of jurisdictional facilities as a result of certain proposed transfers of ownership or control of equity interests in HoldCo. HoldCo states that it owns 100% of the equity interests in Lake Road Gen, which owns and operates a 750 megawatt electric generating facility located near Killingly, Connecticut.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 8, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5927 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–1444–001]

Midwest Independent Transmission System Operator, Inc.; Notice of Filing

October 19, 2005.

Take notice that on September 13, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an errata to its September 6, 2005 filing of an unexecuted Large Generator Interconnection Agreement among

Matton Wind Farm LLC, the Midwest ISO, and Central Illinois Public Service Company d/b/a/ Ameren CIPS.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 28, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5903 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–33–000]

Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 20, 2005.

Take notice that on October 17, 2005, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective November 17, 2005:

Second Revised Sheet No. 218
Third Revised Sheet No. 219
Second Revised Sheet No. 219A

Mojave states that the tariff sheets extend the nomination deadline by fifteen minutes.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5932 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2216–066]

New York Power Authority; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 19, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: New Major License.

b. *Project No.*: 2216–066.

c. *Date Filed*: August 18, 2005.

d. *Applicant*: New York Power Authority.

e. *Name of Project*: Niagara Power Project, which consists of the Lewiston Pump Generating Plant and the Robert Moses Niagara Power Plant.

f. *Location*: The Niagara Power Project is located on the Niagara River in the City of Niagara Falls and the Towns of Niagara and Lewiston, in Niagara County, New York.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Frederick E. Chase, Executive Director of Hydropower Relicensing, Power Authority of the State of New York, 30 South Pearl Street, Albany, NY 12207–3425, (518) 433–6738 or *chase.f@nypa.gov*.

i. *FERC Contact*: Steve Kartalia, (202) 502–6131 or *Stephen.kartalia@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *Description of Project*: The existing project has a conventional development and a pumped storage development for a total current installed capacity of 2,538 megawatts (based on currently completed upgrades). Existing project facilities include: (a) Two 700-foot-long intake structures located on the upper Niagara River about 2.6 miles upstream from the American Falls; (b) two 4.3-mile-long concrete underground water supply conduits, each measuring 46 feet wide by 66.5 feet high; (c) a forebay; (d) the Lewiston Pump-Generating Plant, measuring 975 feet long by 240 feet wide by 160 feet high; (e) the 1,900-acre Lewiston Reservoir at a maximum water surface elevation of 658 feet United States Lake Survey Datum; (f) the Robert Moses Niagara power plant, including an intake structure, measuring 1,100 feet long by 190 feet wide by 100 feet high; (g) a switch yard; and (h) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. Procedural schedule and final amendments: At this time we anticipate preparing a draft environmental impact statement (DEIS). Recipients will have 60 days to provide the Commission with any written comments on the DEIS. All comments filed with the Commission will be considered in the final environmental impact statement (FEIS). The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Notice of application ready for environmental analysis, soliciting final terms and conditions: February 2006.

Notice of the Availability of the DEIS: May 2006.

Notice of the Availability of the FEIS: November 2006.

Ready for Commission's decision on the application: February 2007.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5904 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–28–000]

Petal Gas Storage, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

October 19, 2005.

Take notice that on October 14, 2005, Petal Gas Storage, L.L.C. (Petal) tendered for filing as part of its FERC Gas Tariff, Original Volume No.1, First Revised Sheet No. 138, to become effective November 14, 2005.

Petal states that the purpose of this filing is to remove the CIG/Granite State policy discount provisions in section 26 of the general terms and conditions of Petal's tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5908 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES06–1–000]

PPL Electric Utilities Corporation; Notice of Application

October 18, 2005.

Take notice that on October 11, 2005, PPL Electric Utilities Corporation, submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue and reissue, and to have outstanding at any one time, short-term indebtedness in an

aggregate face amount not to exceed $600 million.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 4, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5913 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–59–004; IN03–10–000; PA02–2–000]

Reliant Energy Services, Inc., et al.; Notice of Filing

October 18, 2005.

Take notice that on October 11, 2005, Reliant Energy Services, Inc., Reliant Energy Ellwood, Inc. and Reliant Energy Mandalay, Inc. (collectively, Reliant) pursuant to Rule 212 of the Commission's Rules of Practice and Procedures, file a motion for waiver and modification of Article IV, section 4 of the Stipulation and Consent Agreement approved by the Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 26, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5916 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–1311–001]

Southern California Edison Company; Notice of Filing

October 19, 2005.

Take notice that on October 5, 2005, Southern California Edison Company (SCE) filed with the Commission an executed Letter Agreement to revise and supplement the terms set forth in the Interconnection Facilities Agreement between SCE and Mountainview Power Company, LLC.

SCE states that copies of the filing have been mailed to the official service list in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 31, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5902 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–30–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

October 20, 2005.

Take notice that on October 14, 2005, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective November 14, 2005:

Second Revised Sheet No. 559
Second Revised Sheet No. 561

Texas Eastern states that copies of its filing have been served upon all affected customers of Texas Eastern and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5931 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–26–000]

Texas Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 19, 2005.

Take notice that on October 13, 2005, Texas Gas Transmission, LLC, (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective December 1, 2005:

Second Revised Sheet No. 278
First Revised Sheet No. 278A

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5906 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–17–005]

Trans-Elect NTD Path 15, LLC; Notice of Compliance Filing

October 18, 2005.

Take notice that on October 12, 2005, Trans-Elect NTD Path 15, LLC, pursuant to the Commission's Order issued August 19, 2005, submitted a second compliance filing documenting the actual or potential tax liability of the individual equity owners of Trans-Elect NTD Holdings Path 15 LLC.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 25, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5918 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–27–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 19, 2005.

Take notice that on October 13, 2005, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective November 15, 2005.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5907 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–32–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 19, 2005.

Take notice that on October 14, 2005, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective November 15, 2005:

First Revised Sheet No. 33A
Second Revised Sheet No. 33B

Transco states that copies of the filing are being mailed to affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5911 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–34–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

October 20, 2005.

Take notice that on October 17, 2005, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets to become effective November 17, 2005:

Eighth Revised Sheet No. 64
Seventh Revised Sheet No. 64C
Sixth Revised Sheet No. 64G
Fifth Revised Sheet No. 64H
Third Revised Sheet No. 64I

WIC states that the tariff sheets extend the nomination deadline by fifteen minutes.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5933 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–36–000]

Young Gas Storage Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

October 20, 2005.

Take notice that on October 17, 2005, Young Gas Storage Company, Ltd. (Young) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective November 17, 2005:

Eighth Revised Sheet No. 80
Third Revised Sheet No. 80C
First Revised Sheet No. 80F
First Revised Sheet No. 80G
First Revised Sheet No. 80H
Third Revised Sheet No. 80I

Young states that the tariff sheets extend the nomination deadline by fifteen minutes.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5935 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–5–000]

The City of Glendale, CA, Complainant v. Portland General Electric Company, Respondent; Notice of Complaint Requesting Fast Track Consideration

October 19, 2005.

Take notice that on October 18, 2005, the City of Glendale, California (Glendale) filed with the Commission a complaint against Portland General Electric Company (PGE), alleging the PGE as failed to follow and apply the requirements for the pricing, fees, and charges for energy and firm system capacity that PGE sells to Glendale under the Long-Term Power Sale and Exchange Agreement between Glendale and PGE (Agreement). Glendale requests a Commission order directing PGE to refund all amounts paid by Glendale in excess of the just and reasonable prices and formulary rates of the Agreement, plus interest, from the initial date of PGE's erroneous billing to present. Glendale also requests fast-track consideration of its complaint in light of PGE's August 2005 filing of a complaint for declaratory relief in the U.S. District Court in Oregon, which addresses many of the same issues and matters in dispute here.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 8, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5912 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 18, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER05–1407–001.

Applicants: Portland General Electric Company.

Description: Portland General Electric Co submits revised filing in response to FERC's request for additional information.

Filed Date: October 12, 2005.

Accession Number: 20051013–0074.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2005.

Docket Numbers: ER05–150–002.

Applicants: Trinity Public Utilities District.

Description: Trinity Public Utilities District advises FERC that it has prepared, executed and forwarded to Pacific Gas & Electric Co an amendment to the existing Operating Agreement.

Filed Date: October 12, 2005.

Accession Number: 20051014–0113.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2005.

Docket Numbers: ER06–19–000.

Applicants: MeadWestvaco Energy Services, LLC.

Description: MeadWestvaco Energy Services LLC notifies FERC that it changed its name to NewPage Energy Services LLC effective September 30, 2005.

Filed Date: October 11, 2005.

Accession Number: 20051017–0221.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 1, 2005.

Docket Numbers: ER06–22–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an unexecuted Large Generator Interconnection Agreement among Endeavor Power Partners, Midwest ISO and Interstate Power and Light Company 22.

Filed Date: October 12, 2005.

Accession Number: 20051013–0045.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2005.

Docket Numbers: ER06–23–000.

Applicants: TXU Electric Delivery Company.

Description: TXU Electric Delivery Co submits a notice of cancellation of Transmission Service Agreement Nos. 94, 106, and 111 pursuant to FERC Electric Tariff, Ninth Revised Volume No. 1.

Filed Date: October 12, 2005.

Accession Number: 20051013–0078.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2005.

Docket Numbers: ER06–25–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp on behalf of AEP Texas North Co submits an executed amended and restated generation interconnection agreement with Buffalo Gap Wind Farm, LLC etc.

Filed Date: October 12, 2005.

Accession Number: 20051013–0081.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2005.

Docket Numbers: ER06–29–000.

Applicants: Dartmouth Power Associates Limited Partnership.

Description: Dartmouth Power Associates L.P. submits a notice of cancellation of FERC Rate Schedule No. 1 effective October 13, 2005.

Filed Date: October 12, 2005.

Accession Number: 20051014–0116.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2005.

Docket Numbers: ER06–30–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc. submits an executed Large Generator Interconnection Agreement among Union Electric Co dba AmerenUE, Midwest ISO and Central Illinois Public Service Company dba AmerenCIPS.

Filed Date: October 11, 2005.

Accession Number: 20051017–0222.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 1, 2005.

Docket Numbers: ER99–3077–002.

Applicants: Colorado Power Partners.

Description: Colorado Power Partners submits its updated market power analysis in compliance with FERC's prior Orders.

Filed Date: October 12, 2005.

Accession Number: 20051014–0114.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2005.

Docket Numbers: ER99–3197–002.

Applicants: BIV Generation Company, L.L.C.

Description: BIV Generation Co, LLC submits its updated market power analysis in compliance with FERC's July 28, 1999 Order.

Filed Date: October 12, 2005.

Accession Number: 20051014–0118.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For

assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5900 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 20, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–783–004; ER02–852–004; ER02–855–004; ER01–2262–006; ER03–438–003; ER95–433–001; ER05–723–003.

Applicants: EPCOR Merchant and Capital (US) Inc.; EPCOR Power Development, Inc. EPDC, Inc.; Frederickson Power L.P.; Manchief Power Company LLC; Curtis/Palmer Hydroelectric Company L.P.; EPCOR Power (Castleton) LLC.

Description: EPCOR Merchant and Capital (US) Inc., EPCOR Power Development Inc. et al. submits a Notice of Change in Status regarding Market-Based Rate Authority.

Filed Date: 10/12/2005.

Accession Number: 20051019–0016.

Comment Date: 5 p.m. eastern time on Wednesday, November 02, 2005.

Docket Numbers: ER06–9–000.

Applicants: FPL Energy Burleigh County Wind, LLC.

Description: Request for authorization to sell energy & capacity at market-based rates re FPL Energy Burleigh County Wind, LLC.

Filed Date: 10/03/2005.

Accession Number: 20051007–0011.

Comment Date: 5 p.m. eastern time on Monday, October 24, 2005.

Docket Numbers: ER06–32–000.

Applicants: American Transmission Company LLC.

Description: American Transmission Co., LLC, by its corporate manager, ATC Management Inc., submits a notice of cancellation of Attachments K & K–1 to the Open Access Transmission Tariff, FERC Electric Tariff, Volume No. 1.

Filed Date: 10/13/2005.

Accession Number: 20051017–0227.

Comment Date: 5 p.m. eastern time on Thursday, November 03, 2005.

Docket Numbers: ER06–33–000.

Applicants: Pacific Gas & Electric Company.

Description: Pacific Gas & Electric Co. submits its filing proposing certain revisions to its First Revised Rate Schedule FERC No. 208 for the Reliability Must-Run Service Agreement with California Independent System Operator Corp.

Filed Date: 10/13/2005.

Accession Number: 20051017–0226.

Comment Date: 5 p.m. eastern time on Thursday, November 03, 2005.

Docket Numbers: ER06–44–000; ER06–45–000.

Applicants: Manchief Power Company, LLC; EPCOR Power (Castleton).

Description: Manchief Power Co., LLC and EPCOR Power (Castleton) submit revisions to their respective FERC Electric Tariffs.

Filed Date: 10/12/2005.

Accession Number: 20051019–0029.

Comment Date: 5 p.m. eastern time on Wednesday, November 2, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5924 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–372–000]

Midwestern Gas Transmission Company; Notice of Availability of the Environmental Assessment for the Proposed Mgt Eastern Extension Project

October 20, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Midwestern Gas Transmission Company (MGT) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed 30.9 miles of 16-inch-diameter pipeline commencing at the MGT Portland Station in Sumner County, Tennessee and traversing southeasterly to proposed interconnects with Columbia Gulf Transmission Company and East Tennessee Natural Gas Company in Trousdale County, Tennessee. The proposed pipeline would deliver up to 120,000 decatherms per day (Dth/d) to Piedmont Natural Gas Company, Inc., a local distribution company, for long-term transportation. Additional pipeline facilities would consist of a pig launcher and piping modifications to existing reciprocating engines at the MGT Portland Station,

mainline valve assemblies and a pig receiver at the terminus of the line, ultrasonic meters with electronic flow measurement, flow control valves, and data acquisition control buildings.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 502–8371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, Native American tribes, interested individuals, local libraries, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 1;
- Reference Docket No. CP05–372–000; and
- Mail your comments so that they will be received in Washington, DC on or before November 21, 2005.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–5938 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF05–6–000]

Transcontinental Gas Pipe Line Corporation; Supplemental Notice of Intent To Prepare an Environmental Assessment for the Proposed Leidy to Long Island Expansion Project and Request for Comments on Environmental Issues

October 19, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) are preparing an environmental assessment (EA) that will discuss the environmental impacts of the Leidy to Long Island Expansion Project (project) proposed by Transcontinental Gas Pipe Line Corporation (Transco). The FERC will be the lead Federal agency in the preparation of the EA, but will prepare the EA in coordination with its cooperating agencies: The Environmental Protection Agency, National Oceanic and Atmospheric Administration National Marine Fisheries Service, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service. The document will satisfy the requirements of the National Environmental Policy Act.

This notice supplements the informational letter issued by the FERC on January 13, 2005, which announced FERC's initiation of a pre-filing environmental review for the project, and the Notice of Intent (NOI) to prepare an EA issued on May 25, 2005. Those previous transmittals provided information about the proposed project and the FERC's environmental review process and requested comments on the scope of issues to address in the EA. The comment period for the NOI closed on June 24, 2005.

Transco has recently identified two new potential compressor station sites in Middlesex County, New Jersey. These new sites were not included in the previous transmittals issued by FERC. The sites, known as Mario's Concrete (Lot 8) and Manzo site (Lot 13.13), are located southeast of the Madison Park subdivision, and also southeast of the proposed Cheesequake site. They are bordered by Bordentown Avenue to the west. A map depicting the proposed site locations is included in Appendix A.[1] We[2] are specifically requesting comments on the new sites or any previously proposed sites. The scoping period for this notice ends on November 18, 2005.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. Please carefully follow these instructions to ensure that your

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch at (202) 502–8371. For instructions on connecting to eLibrary, refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

comments are received in time and properly recorded:

• Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

• Label one copy of your comments for the attention of Gas Branch 3, DG2E;

• Reference Docket No. PF05–6–000 on the original and both copies; and

• Mail your comments so that they will be received in Washington, DC on or before November 18, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. Therefore, the Commission encourages electronic filing of comments. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create a free account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Becoming an Intervenor

Because the NEPA Pre-Filing Process occurs before an application to begin a proceeding is officially filed, petitions to intervene during this process are premature and will not be accepted by the Commission. Transco proposes to file its application for authorization to construct the proposed facilities in mid-November. At that time, the Commission will publish notice of the application in the **Federal Register** and establish a deadline for interested persons to intervene in the proceeding.

To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov.* Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries and newspapers; and other interested parties that expressed an interest in the project. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *ferconlinesupport@ferc.gov.* The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, Transco has established a toll-free information telephone line at (866) 455–9103, as well as an e-mail address at *questions@northeastexpansion.williams.com.* Transco's single point of contact for the project is Mr. James Goudreau, and can be reached by phone at (908) 788–8996. You may also access Transco's Leidy to Long Island Expansion Project Web site at *http://www.williams.com/northeastexpansion.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–5905 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and To Change Name of Project and Soliciting Comments, Motions to Intervene, and Protests

October 20, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 7000–030.

c. *Date Filed:* October 4, 2005.

d. *Applicants:* Brascan Power St. Lawrence River LLC, formerly known as: Orion Power New York GP II, Inc. (Transferor). Erie Boulevard Hydropower, L.P. (Transferee).

e. *Name and Location of Project:* The Newton Falls Hydroelectric Project is located on the Oswegatchie River in St. Lawrence County, New York.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicants' Contact:* Amy S. Koch, Patton Boggs LLP, 2550 M Street, NW., Washington, DC 20037, (202) 457–5618.

h. *FERC Contact:* James Hunter at (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* November 10, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* The Applicants seek Commission approval to transfer the license for the Newton Falls Hydroelectric Project from the Transferor to the Transferee as part of an internal corporate reorganization.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number (P–7000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''Comments'', ''Protest'', or ''Motion to Intervene'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicants. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants' representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5929 Filed 10–25–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2005–0027; FRL–7988–8]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Glass Manufacturing Plants (Renewal), ICR Number 1131.08, OMB Control Number 2060–0054

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 25, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2005–0027, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005 (70 *FR* 24020), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2005–0027, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the

electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NSPS for Glass Manufacturing Plants (Renewal).

Abstract: The New Source Performance Standards (NSPS) for glass manufacturing plants, were proposed on June 15, 1979, and promulgated on October 7, 1980, and amended on October 19, 1984. These standards apply to any glass manufacturing facility for which construction or modification commences after June 15, 1979. The standards do not apply to hand glass melting furnaces, glass melting furnaces designed to produce less than 4.55 Mg (5 tons) of glass per day, or all-electric melters. Experimental furnaces are not subject to the emission standards at 40 CFR 60.292.

Owners or operators of the affected facilities described must make initial notifications, conduct and report on a performance test, demonstrate and report on continuous monitor performance, maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports are required. These notifications, reports, and records are required, in general, for all sources subject to NSPS. The recordkeeping and reporting requirements specific to glass manufacturing plants are detailed in the 40 CFR part 60, subpart CC. This information is being collected to assure compliance with 40 CFR part 60, subpart CC.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agencyrespond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average eight hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of glass manufacturing plants.

Estimated Number of Respondents: 41.

Frequency of Response: On occasion, semiannually, and initially.

Estimated Total Annual Hour Burden: 803 hours.

Estimated Total Annual Costs: $302,601, which includes $0 annualized capital/startup costs, $237,800 in annual O&M costs, and $64,801 in Respondent Labor costs.

Changes in the Estimates: There is an increase of 213 burden hours as compared to the active ICR. The increase in burden from the most recently approved ICR is due to the fact that we are presently accounting for management and clerical person hours per year, which was not accounted for in the active ICR. There was however, a decline of four sources as compared to the active ICR. This decline was due to plant closure and the high cost to retrofit aging facilities, and corporate mergers.

Dated: October 17, 2005.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. 05–21369 Filed 10–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2002–0011, FRL–7988–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* Under the Safe Drinking Water Act, EPA ICR Number 2067.03, OMB Control Number 2040–0246

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 25, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2002–0012, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epamail.epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Sean Conley, Office of Groundwater and Drinking Water, (Mail Code 4607M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–1781; fax number: 202–564–3767; e-mail address: *conley.sean@epa.gov*. For technical inquiries, contact Carrie Moulton, EPA, Office of Ground Water and Drinking Water, Technical Support Center, 26 West Martin Luther King Drive (MS–140), Cincinnati, Ohio 45268; fax number: (513) 569–7191; e-mail address: *moulton.carrie@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 3, 2005 (70 FR 32607), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID No. OW–2002–0012, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at

http://www.epa.gov/edocket. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* under the Safe Drinking Water Act.

Abstract: Under the Laboratory Quality Assurance Evaluation Program, EPA evaluates labs on a case-by-case basis through evaluating their capacity and competency to reliably measure for the occurrence of *Cryptosporidium* in surface water using EPA Method 1622 or EPA Method 1623. To obtain approval under the program, the laboratory must submit an application package and provide: a demonstration of availability of qualified personnel and appropriate instrumentation, equipment and supplies; a detailed laboratory standard operating procedure for each version of the method that the laboratory will use to conduct the *Cryptosporidium* analyses; a current copy of the table of contents of their laboratory's quality assurance plan for protozoa analyses; and an initial demonstration of capability data for EPA Method 1622 or EPA Method 1623, which include precision and recovery test results and matrix spike/matrix spike duplicate test results for *Cryptosporidium.*

After the laboratory submits to EPA an application package including supporting documentation, EPA and the laboratory conduct the following steps to complete the process:

1. EPA contacts the laboratory for follow-up information and to schedule participation in the performance testing program.
2. EPA sends initial proficiency testing samples to the laboratory (unless the laboratory has already successfully analyzed such samples under EPA's Protozoan PE program). These sample packets consist of eight spiked samples shipped to the laboratory within a standard matrix.
3. The laboratory analyzes initial proficiency testing samples and submits data to EPA.
4. EPA conducts an on-site evaluation and data audit.
5. The laboratory analyzes ongoing proficiency testing samples three times per year and submits the data to EPA. These sample packets consist of three spiked samples shipped to the laboratory within a standard matrix.
6. EPA contacts laboratories by letter within 60 days of their laboratory on-site evaluation to confirm whether the laboratory has demonstrated its capacity and competency for participation in the program.

The procedure for obtaining an application package, the criteria for demonstrating capacity and competency, and other guidance to laboratories that are interested in participating in the program, are provided at *http://www.epa.gov/safewater/lt2/cla_final.html.*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 19 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Public and private water testing laboratories.

Estimated Number of Respondents: 22.

Frequency of Response: Three times per year.

Estimated Total Annual Hour Burden: 3,980.

Estimated Total Annual Cost: $275,000, includes $109,000 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 367 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is just an adjustment to the estimate.

Dated: October 18, 2005.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. 05–21370 Filed 10–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2005–0084; FRL–7988–6]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request; National Emission Standards for Hazardous Air Pollutants From Plating and Polishing Operations, EPA ICR Number 2186.01

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. This ICR describes the nature of the information collection and its estimated burden.

DATES: Comments must be submitted on or before November 25, 2005.

ADDRESSES: Submit your comments, referencing Docket ID number OAR–2005–0084, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC),

Air and Radiation Docket and Information Center, Mailcode 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Donna Lee Jones, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (C439–02), Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–5251; fax number: (919) 541–3207; e-mail address: *jones.donnalee@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 29, 2005 (70 FR 43865), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

The EPA has established a public docket for this ICR under Docket ID number OAR–2005–0084, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. 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 Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 30 days of this notice. The EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted information, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: National Emission Standards for Hazardous Air Pollutants from Plating and Polishing Operations.

Abstract: The proposed ICR will collect information and data from 1,208 existing plating and polishing facilities. Facilities will be requested to complete a simple paper questionnaire on general facility information (location, description, types of processes performed, operating hours, technical contact), HAP emissions and permit data, permit conditions, emission tests data, process design and operating data, HAP-containing material data, finished product types, local ventilation system information, HAP emission control measures, and pollution prevention practices. The questionnaire may be completed from readily available information; no additional emission testing or monitoring will be required.

The EPA will use the collected information and data to evaluate the need for area source National Emission Standards for Hazardous Air Pollutants (NESHAP) required under section 112(k) of the Clean Air Act for the Plating and Polishing Area Source Category. If an area source NESHAP is developed, the collected information will be used to evaluate the types of provisions needed to limit HAP emissions from plating and polishing operations and to estimate the impacts of regulatory options.

The EPA's authority to collect information is contained in Section 114 of the Clean Air Act, (42 U.S.C 7414). All information submitted to EPA pursuant to this ICR for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 12.1 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are establishments primarily engaged in all types of electroplating, electroless plating, metal or thermal spraying, anodizing, coloring, and finishing of metals and formed products for the trade. Also potentially affected by this action are establishments which perform these types of activities, on their own account, on purchased metals or formed products. The standard industrial classification (SIC) code for this industry is primarily 3471, Electroplating, Plating, Polishing, Anodizing, and Coloring; the North American Industry Classification System (NAICS) code is 332813, Electroplating, Plating, Polishing, Anodizing, and Coloring.

Estimated Number of Respondents: 1,208.

Frequency of Response: This is a new collection requiring a one-time response.

Estimated Total Annual Hour Burden: 5,608 hours.

Estimated Total Annual Cost: $366,566, which includes $0 annual capital/startup costs, $0 annual O&M costs, and $366,566 annual labor costs.

Changes in the Estimates: This section does not apply since this is a new collection.

Dated: October 18, 2005.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. 05–21371 Filed 10–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2005–0003; FRL–7988–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Market-Based Stormwater Management in the Shepherd Creek Watershed in Cincinnati, OH, EPA ICR Number 2178.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 25, 2005.

ADDRESSES: Submit your comments, referencing docket ID number ORD–2005–0003, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *ord.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, ORD Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Hale W. Thurston, ORD, NRMRL, Mail Code 499, 26 W. Martin Luther King Jr. Drive, Cincinnati, OH, 45268; telephone number: 513.569.7627; fax number: 513.487.2511; e-mail address: *thurston.hale@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On Wednesday, July 13, 2005 (70 FR 40329), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. ORD–2005–0003, which is available for public viewing at the ORD Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Market-based Stormwater Management in the Shepherd Creek Watershed in Cincinnati, Ohio.

Abstract: The Sustainable Technology Division (STD) of the National Risk Management Research Laboratory (NRMRL) in the Office of Research and Development (ORD) of the U.S. Environmental Protection Agency (EPA) is proposing to conduct a survey of individual property owners in the Shepherd Creek watershed in Cincinnati, OH. The survey will elicit how residents value the voluntary adoption of on-site best management practices as part of a comprehensive stormwater runoff control policy. The focus will be on estimating the minimum payment required to induce individual landowners to devote a portion of their property to runoff reducing best management practices.

This data collection is motivated by the current stormwater related problems within the United States in general, and in the greater Cincinnati metropolitan area in particular. Urban and suburban development changes the natural landscape making it more impervious to rain and snow. The resulting stormwater runoff is one of the most significant contributors to water quality degradation in the United States through larger and more frequent floods, increased erosion of stream beds and banks, disruption of natural habitat in receiving waters, and increased pollution loadings of metals, toxics, and nutrients. Precipitation falls over large geographic areas, and the resulting runoff will flow across a myriad of parcels with varying land uses, which are, in turn, under the control of numerous property owners. Perhaps in reaction to these conditions, stormwater control policies have concentrated on solutions that build centralized capacity to direct and hold excess runoff within the storm sewer system. An alternative approach to stormwater control would be to develop a decentralized approach that disperses runoff detention throughout the watershed, thus reducing runoff before it reaches the sewer system. This approach promises both hydrological benefits of reducing the in-stream damages that will continue to occur in a centralized system, as well as potential cost-savings in terms of meeting environmental quality standards.

Although the installation, operation, and maintenance costs for best management practices are relatively well known, these are only a portion of the total costs of adoption. The opportunity costs (*e.g.:* the costs of partial loss of use of property) associated with BMP adoption are privately held by individual landowners, and can potentially comprise the largest share of total abatement adoption costs. To better understand the economic potential of a voluntary and decentralized runoff control program, it is necessary to assess the opportunity costs associated with best management practice adoption. The proposed survey provides a means of gathering this information. It also asks 10–12 non-invasive demographic questions.

The survey will be conducted using six (6) groups of ten (10) residential landowners from the Shepherd Creek watershed. Participation will be completely voluntary. Residents who wish to participate in the study will be identified and recruited through a liaison from the Hamilton County Soil and Water Conservation District, who is

familiar with the community. The survey will be conducted using a computer simulated nonuniform-price, sequential auction for the procurement of best management practices. Participants will be presented with a selection of best management practices that are feasible for use on their actual parcel. Information regarding how each BMP will perform on their specific parcel, as well as the installation, operation, and maintenance costs will be provided. The auction is designed to compensate residents for their costs of adopting best management practices on their property. Participants who wish to adopt BMPs will submit bids that consist of the size and type of the BMPs and the minimum compensation that they require. The goal is to pay those landowners who adopt the most effective best management practices at the lowest price. Survey results will then be used to estimate the minimum payments required to achieve control stormwater runoff through on-site best management practices. Data will be stored on U.S. Environmental Protection Agency computer files that protect respondent confidentiality. Summary results will be made available to the public.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Homeowners in the Shepherd Creek Area of Cincinnati, OH.

Estimated Number of Respondents: 60.

Frequency of Response: On Occasion.

Estimated Total Annual Hour Burden: 120.

Estimated Total Annual Cost: $3,000, includes $0 annualized capital or O&M costs.

Dated: October 19, 2005.

Sara Hisel McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. 05–21373 Filed 10–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0038; FRL–7989–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Survey of Airport Deicing Operations, EPA ICR Number 2171.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 25, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2004–0038, to (1) EPA online using E-Docket (our preferred method), by e-mail to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, EPA West, 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, Engineering & Analysis Division, Office of Water, Mail Code 4303T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1026; fax number: (202) 566–1053; e-mail address: *strassler.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 17, 2005 (70 FR 13025), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received in the supporting statement of this ICR.

EPA has established a public docket for this ICR under Docket ID No. OW–2004–0038, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Survey of Airport Deicing Operations.

Abstract: EPA is developing wastewater discharge standards, called ''effluent guidelines,'' for airports

pursuant to the Agency's 2004 Effluent Guidelines Plan (69 FR 53719, September 2, 2004). The focus of the rulemaking is on wastewater discharges from aircraft and airport pavement deicing operations. EPA will send survey questionnaires to a sample of airports and airlines to help the Agency compile a national assessment of deicing operations. Three questionnaires will be used: A detailed airport questionnaire, a short ''screener'' airline questionnaire, and a detailed airline questionnaire. The detailed questionnaires will include questions on the deicing technologies employed, amount of deicing chemicals used, pollution prevention techniques, and economic and financial information. The airline screener will ask airlines whether they deice their own aircraft at specified locations, or if another party conducts the deicing operation. EPA will use the screener results to select airline locations for responding to the detailed airline questionnaire. Completion of this one-time survey will be mandatory pursuant to section 308 of the Clean Water Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 62 hours for airport questionnaire respondents, 21 hours for airline detailed questionnaire respondents, and 5.5 hours for airline screener respondents to complete and review their responses to the questionnaire and associated data submissions. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Airports and airlines that perform deicing and anti-icing on aircraft and/or airfield pavement.

Estimated Number of Respondents: 290.

Frequency of Response: One time response.

Estimated Total Annual Hour Burden: 20,851 hours.

Estimated Total Annual Cost: $871,998, includes $0 annualized capital expenditure and $8,134 Respondent O&M costs.

Dated: October 19, 2005.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. 05–21374 Filed 10–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7988–4]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address petitions for review filed by American Chemistry Council (''ACC''), Eastman Chemical Company, Clariant LSM (America), Inc., Rohm and Haas Company, General Electric Company, Lyondell Chemical Company and the Coke Oven Environmental Task Force (collectively ''petitioners''). *ACC et al.* v. *EPA* Nos. 04–1004 (and consolidated cases 04–1005, 04–1008, 04–1009, 04–1010, 04–1012, and 04–1013) (D.C. Cir.). In January 2003, petitioners filed petitions for review challenging the final EPA rule entitled ''National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing; Final Rule'' (''MON''). 68 FR 63852 (November 10, 2003). Under the terms of the proposed settlement agreement, EPA has agreed that: On or before November 30, 2005, the EPA Administrator will sign a notice of proposed rulemaking to amend the MON as provided in Attachment A to the Settlement Agreement; As part of the proposed amendments to the MON, EPA will include language in the preamble as provided in Attachment B to the Settlement Agreement; Within 30 days of the date the comment period on the proposed amendments closes, EPA will take final action on the proposed 18 month compliance extension; and Within 150 days of the date the comment period on the proposed amendments closes, EPA will sign a notice of final rulemaking.

DATES: Written comments on the proposed settlement agreement must be received by November 25, 2005.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2005–0015, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Elliott Zenick, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone: (202) 564–1822.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement

This case concerns challenges to the rule entitled ''National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing; Final Rule'' (''MON''). 68 FR 63852 (November 10, 2003). These standards are based on the performance of Maximum Achievable Control Technology (MACT), and implement section 112(d) of the Clean Air Act. Under the terms of the proposed settlement agreement, EPA has agreed that: (1) On or before November 30, 2005, the EPA Administrator will sign a notice of proposed rulemaking to amend the MON as provided in Attachment A to the Settlement Agreement; (2) As part of the proposed amendments to the MON, EPA will include language in the preamble as provided in Attachment B to the Settlement Agreement; (3) Within 30 days of the date the comment period on the proposed amendments closes, EPA will take final action on the

proposed 18 month compliance extension; and (4) Within 150 days of the date the comment period on the proposed amendments closes, EPA will sign a notice of final rulemaking.

Petitioners have agreed to dismiss their petitions for review if EPA takes final action amending the MON in a manner substantially the same as the amendments set forth in Attachment A and not substantially inconsistent with the language in Attachment B.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement

A. How Can I Get a Copy of the Settlement?

EPA has established an official public docket for this action under Docket ID No. OGC–2005–0015 which contains a copy of the settlement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: October 19, 2005.

Brenda Mallory,

Acting Principal Deputy General Counsel, Office of General Counsel.

[FR Doc. 05–21368 Filed 10–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0257; FRL–7742–5]

Versar, Inc. and EnDyna, BR Stern and Associates, Menzie-Cura and Associates, and Tetrahedon, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Versar, Inc. and its subcontractors, EnDyna, BR Stern and Associates, Menzie-Cura and Associates, and Tetrahedon, Inc., in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Versar, Inc. and its subcontractors, EnDyna, BR Stern and Associates, Menzie-Cura and Associates, and Tetrahedon, Inc., have been awarded a contract to perform work for OPP, and access to this information will enable Versar, Inc. and its subcontractors, EnDyna, BR Stern and Associates, Menzie-Cura and Associates, and Tetrahedon, Inc., to fulfill the obligations of the contract.

DATES: Versar, Inc. and its subcontractors, EnDyna, BR Stern and Associates, Menzie-Cura and Associates, and Tetrahedon, Inc., will be given access to this information on or before October 31, 2005.

FOR FURTHER INFORMATION CONTACT: Felicia Croom, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460–0001; telephone number: (703) 305–0786.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0257. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Contractor Requirements

Under Contract No. EP–W–05057, Versar, Inc. and its subcontractors, EnDyna, BR Stern and Associates, Menzie-Cura and Associates, and Tetrahedon, Inc., will perform exposure assessments and relevant information necessary for EPA to fulfill the requirements of the Pesticide Registration Improvement Act (PRIA), FIFRA, Food Quality Protection Act (FQPA), FFDCA, the Pollution Prevention Act, and any other Executive Order or legislative requirement. These objectives shall be obtained by providing technical support for registration and reregistration activities relating to occupational and residential exposure and risk assessments.

OPP has determined that access by Versar, Inc. and its subcontractors, EnDyna, BR Stern and Associates, Menzie-Cura and Associates, and Tetrahedon, Inc., to information on all presticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Versar, Inc. and its subcontractors, EnDyna, BR Stern and Associates, Menzie-Cura and Associates, and Tetrahedon, Inc., prohibits use of the information for any purpose not specified in the contract, prohibits disclosure of the information to a third party without prior written approval from the Agency, and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Versar, Inc. and its subcontractors, EnDyna, BR Stern and Associates, Menzie-Cura and Associates, and Tetrahedon, Inc., are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Versar, Inc. and its subcontractors, EnDyna, BR Stern and Associates, Menzie-Cura and Associates, and Tetrahedon, Inc., until the requirements in this document have been fully satisfied. Records of information provided to Versar, Inc. and its subcontractors, EnDyna, BR Stern and Associates, Menzie-Cura and Associates, and Tetrahedon, Inc., will be maintained by EPA project officers for this contract. All information supplied to Versar, Inc. and its subcontractors, EnDyna, BR Stern and Associates, Menzie-Cura and Associates, and Tetrahedon, Inc., by EPA for use in connection with this contract will be returned to EPA when Versar, Inc. and its subcontractors, EnDyna, BR Stern and Associates, Menzie-Cura and Associates, and Tetrahedon, Inc., have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

October 17, 2005.

Robert Forrest,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 05–21269 Filed 10–25–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0370; FRL–7737–7]

Endothall Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide endothall. The Agency's risk assessments and other related documents also are available in the endothall Docket. Endothall is used as an aquatic herbicide to control submerged aquatic vegetation and algae in lakes, ponds, and irrigation canals and is used as a desiccant on cotton, hops, potatoes, and seed production for alfalfa and clover. Endothall is also used as a biocide to control mollusks in cooling towers/systems. Endothall is applied as either a dipotassium salt or an N, N-dimethylalkylamine salt. The endothall acid is not directly applied to use sites; it is formed as a break-down product resulting from application of the salt forms. The amine salt is the only form applied terrestrially, while both the dipotassium and amine salt are applied to aquatic use sites. EPA has reviewed endothall through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Anne Overstreet, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8068; fax number: (703) 308–8005; e-mail address: *overstreet.anne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others 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 OPP–2005–0370. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide, endothall under section 4(g)(2)(A) of FIFRA. Endothall is a dicarboxylic acid used as an aquatic herbicide to control submerged aquatic vegetation and algae in lakes, ponds, and irrigation canals and is used as a desiccant on cotton, hops, potatoes, and seed production for alfalfa and clover. Endothall is also used as a biocide to control mollusks in cooling towers/systems. Endothall is applied as either a dipotassium salt or an N, N-dimethylalkylamine salt. The endothall acid is not directly applied to use sites, it is formed as a break-down product resulting from application of the salt forms. The amine salt is the only form applied terrestrially, while both the dipotassium and anime salt are applied to aquatic use sites. EPA has determined that the data base to support reregistration is substantially complete and that products containing endothall are eligible for reregistration, provided the risks are mitigated in the manner described in the RED. Upon submission of any required product-specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product-specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing endothall.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the endothall tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, endothall was reviewed through the modified 4-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for endothall.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is not holding a comment period for the endothall RED because all issues related to this pesticide were resolved through consultations with stakeholders.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21

U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 26. 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–21366 Filed 10–25–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0281; FRL–7742–4]

Oxydemeton-methyl Interim Reregistration Eligibility Decision and Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Interim Reregistration Eligibility Decision (IRED) for the organophosphate pesticide oxydemeton-methyl (ODM) and the ODM IRED Amendment document. The Agency's risk assessments and other related documents also are available in the ODM Docket (docket number OPP-34167), and on the ODM reregistration website located at *http://www.epa.gov/oppsrrd1/op/odm.htm*. ODM is a systemic, organophosphate insecticide/acaracide registered on terrestrial food crops (vegetable, field, tree fruit, and nut crops) and terrestrial non-food sites (ornamental uses). EPA has reviewed ODM through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Katie Hall, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0166; fax number: (703) 308–8041; e-mail address: *hall.katie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0281. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed an IRED for the organophosphate pesticide, ODM under section 4(g)(2)(A) of FIFRA. ODM is a systemic, organophosphate insecticide/acaricide used to control many insects, primarily aphids, mites, and thrips. Registered use sites include terrestrial food crops (vegetable, field, tree fruit, and nut crops) and terrestrial non-food sites (ornamental uses). The ODM IRED presents the Agency's conclusions on the risks posed by exposure to ODM alone; however, section 408(b)(2)(D)(v) of the Federal Food, Drug, and Cosmetic Act (FFDCA) directs the Agency also to consider available information on the cumulative risk from substances sharing a common mechanism of toxicity. Because the organophosphate pesticides share a common mechanism of toxicity, cholinesterase inhibition, the Agency will evaluate the cumulative risk posed by this group before making final reregistration eligibility decision on individual organophosphates.

During the pendency of the organophosphate cumulative assessment, the Agency is proceeding with risk assessments and interim risk management for individual organophosphate pesticides. EPA has determined that, but for the cumulative risk assessment, the data base to support ODM reregistration is substantially complete and that products containing ODM are eligible for reregistration, provided the risks are mitigated in the manner described in the ODM IRED and ODM IRED Amendment. Upon submission of any required product-specific data under FIFRA section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the IRED or as a result of product-specific data), and after assessing organophosphate cumulative risks, EPA will make a final reregistration decision under FIFRA section 4(g)(2)(C) for products containing ODM. When the Agency finalizes decisions for ODM and other organophosphate pesticides, further risk mitigation may be required for ODM.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by

the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the ODM tolerances, pending completion of the organophosphate cumulative assessment.

Although the ODM IRED was signed on August 5, 2002, certain components of the document, which did not affect the final regulatory decision, were undergoing final editing at that time. These components, including the list of additional generic data requirements, summary of labeling changes, appendices, and other relevant information, have been added to the ODM IRED document. In addition, subsequent to signature, EPA identified several minor errors and ambiguities in the document. These additions or changes do not alter the conclusions documented in the 2002 ODM IRED. Label language and use parameters for use of ODM on lettuce were altered based on submission of additional information that affected the risk conclusions for this use. Label changes are described in detail in the ''Label Changes Summary Table'' in section V.D. of the ODM IRED and in the ''Amendment to the 2002 Oxydemeton-methyl IRED,'' which are included in the public docket for ODM.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, ODM was reviewed through the full 6-Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for ODM.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Since all issues related to this pesticide were resolved through consultations with stakeholders before issuing the ODM IRED Amendment, the Agency is issuing the ODM IRED and ODM IRED Amendment without a comment period. Decisions presented in this IRED may be supplemented by further risk mitigation measures when EPA concludes its cumulative assessment of the organophosphate pesticides.

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

Section 4(g)(2) of FIFRA as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of the FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 19, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–21365 Filed 10–25–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0032; FRL–7988–5]

RIN 2040–AE76

Extension of Comment Period for the Preliminary 2006 Effluent Guidelines Program Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: EPA is extending the comment period for the Agency's completed 2005 annual review and pending 2006 annual reviews of existing effluent limitations guidelines and pretreatment standards under the Clean Water Act (CWA) sections 301(d), 304(b), 304(g), and 307(b), and the Preliminary 2006 Effluent Guidelines Program Plan under CWA section 304(m). EPA is also extending a second comment period on the draft *Strategy for National Clean Water Industrial Regulations* (''draft Strategy'') (67 FR 71165; November 29, 2002). EPA noticed the start of these comment periods on August 29, 2005 (70 FR 51042). In response to requests from several stakeholders, this action extends both comment periods for 30 days.

DATES: EPA must receive your comments on or before November 28, 2005.

ADDRESSES: Identify your comments, data and information relating to the Agency's draft Strategy; by Docket ID No. OW–2002–0020. Identify all other comments, data and information relating to the August 29, 2005 notice by Docket ID No. OW–2004–0032. Submit your comments, data and information by one of the following methods:

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

B. Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments, data, and information. Follow the on-line instructions for submitting comments.

C. E-mail: *OW–Docket@epa.gov.*

D. Mail: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2004–0032. For comments, data, and information on the draft Strategy, use Docket ID No. OW–2002–0020.

E. Hand Delivery: Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2004–0032. Use Docket ID No. OW–2002–0020 for comments, data, and information on the draft Strategy. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments, data, and information to Docket ID No. OW–2004–0032. For comments, data, and information on the draft *Strategy,* use Docket ID No. OW–2002–0020. EPA's policy is that all comments, data, and information received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the material includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through EDOCKET, regulations.gov, or e-mail information that you consider to be CBI or otherwise protected. The EPA EDOCKET and the federal regulations.gov Web sites are ''anonymous access'' systems, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on obtaining access to comments, go to section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Mr. Carey A. Johnston at (202) 566–1014 or *johnston.carey@epa.gov,* or Ms. Jan Matuszko at (202) 566–1035 or *matuszko.jan@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 29, 2005 (70 FR 51042), EPA solicited comment on the Agency's completed 2005 annual review and pending 2006 annual reviews of existing effluent limitations guidelines and pretreatment standards under CWA sections 301(d), 304(b), 304(g), and 307(b), and the Preliminary 2006 Effluent Guidelines Program Plan under CWA section 304(m). EPA also opened a second comment period on the draft *Strategy for National Clean Water Industrial Regulations* (''draft Strategy'') (*see* 67 FR 71165, November 29, 2002). The August 29, 2005 notice describes: (1) The Agency's 2005 annual review of existing effluent limitations guidelines and pretreatment standards under the Clean Water Act (CWA) sections 301(d), 304(b), 304(g), and 307(b); (2) EPA's review of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b); and (3) the preliminary 2006 effluent guidelines program plan under CWA section 304(m) (''Plan''). EPA anticipates completing the final 2006 Plan by August 2006. As required by CWA section 304(m), the final Plan will: (1) Present a schedule for EPA's annual review of existing effluent guidelines under CWA section 304(b) and a schedule for any effluent guidelines revisions; and (2) identify industries for which EPA has not promulgated effluent guidelines but may decide to do so through rulemaking and a schedule for these rulemakings.

The original comment deadline was October 28, 2005. Numerous stakeholders have requested an extension to the comment period in order to adequately understand and provide comments. Additionally, one commenter requested more time due to the difficulty of coordinating with Gulf Coast facilities that were recently incapacitated by hurricanes Rita and Katrina. This action extends the comment period for 30 days.

Dated: October 20, 2005.

Benjamin H. Grumbles,

Assistant Administrator for Water.

[FR Doc. 05–21367 Filed 10–25–05; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank has received an application to finance the export of $14.9 million of equipment and other goods and services to a buyer in Portugal. The U.S. exports will enable the Portuguese company to produce photovoltaic solar modules. The Portuguese company will have a production capacity of 5 megawatts per year, with initial production to commence in 2006. It is envisioned that most of this new production will be consumed in Portugal, Spain, Germany and Italy, with smaller amounts anticipated to be sold in other European countries, Africa and Latin America. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 05–21353 Filed 10–25–05; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 17, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 27, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by email send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0010.

Title: Ownership Report for Commercial Broadcast Station.

Form Number: FCC Form 323.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 2,000.

Estimated Time per Response: 0.5 to 1.5 hours.

Frequency of Response: On occasion reporting requirement; Biennial reporting requirement; Upon renewal reporting requirement; Third party disclosure requirement.

Total Annual Burden: 2,750 hours.

Total Annual Cost: $2,166,800.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Each permittee of a commercial AM, FM, TV, and international broadcast station must file FCC Form 323, Ownership Report, within 30 days of the FCC granting their application for an original construction permit, the consummation, pursuant to FCC consent, of a transfer of control or an assignment of a construction permit, and when it files its license for the new station. Each license of a commercial AM, FM, TV, and international broadcast station must file FCC Form 323 with 30 days of the consummation, pursuant to FCC consent, of a transfer of control or an assignment of license, when it files its station's renewal application, and every two years thereafter. Data on the FCC Form 323 helps to determine whether the licensee/permittee meets the FCC's multiple ownership requirements and complies with the Communications Act. The race/ethnicity/gender question on the form indicates current minority and female ownership of broadcast facilities and the efficacy of FCC Rules to promote opportunities for small businesses and minority and female-owned businesses in the broadcasting industry.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21206 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 18, 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 November 25, 2005. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.* If you would like to obtain or view a copy of this new or revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1030.

Title: Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, Federal Government, and state, local and tribal government.

Number of Respondents: 500.

Estimated Time Per Response: .50 hours–10 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 6,505 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission adopted and released a Report and Order in WT Docket No. 02–353, FCC 03–251, which adopts service, licensing, and competitive bidding rules for advanced wireless services in the 1710–1755 MHz and 2110–2155 MHz bands. These bands have previously been used for a variety of government and non-government services. The R&O allocates these frequency bands for fixed and mobile services to as to provide for the introduction of new advanced wireless services to the public. In the R&O, the Commission is enabling service providers to put this spectrum to its highest value use with minimal transaction costs. By the end of its license term a licensee must provide ''substantial service'' that is, service that is sound, favorable and substantially above the level of mediocre service that just might minimally warrant renewal. Compared to a construction standard, section 27.14(a)'s substantial service requirement will provide licensees greater flexibility to determine how best to implement their business plans based on criteria demonstrating actual service to end users. This requirement provides the flexibility required to accommodate the new and innovative services that we believe will be forthcoming in these bands.

The Commission is imposing three information collection burdens on the public. They are: (1) Foreign ownership change submission; (b) showing of compliance with substantial service requirement; and (3) interference coordination. Such information has been used in the past and will continue

to be used to minimize interference, verify that the applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21294 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 18, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information, subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 27, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by email send them to: *PRA@fcc.gov.* To submit your comments by U.S. mail, mark it to the attention of Leslie F. Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an email to *PRA@fcc.gov* or contact Leslie F. Smith at 202–418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0584.

Title: Administration of U.S. Certified Accounting Authorities in Maritime Mobile and Maritime Mobile-Satellite Radio Services, FCC Forms 44 and 45.

Form Number: FCC 44 and 45.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 25 respondents; 75 responses/annum.

Estimated Time per Response: 1–3 hours.

Frequency of Response: Recordkeeping; Occasion, semi-annual, and annual reporting requirements; Third party disclosure.

Total Annual Burden: 225 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The FCC has standards for accounting authorities in the maritime mobile and maritime-satellite radio services under 47 CFR Part 3. The Commission uses these standards to determine the eligibility of applicants for certification as a U.S. accounting authority, to ensure compliance with the maritime mobile and maritime-satellite radio services, and to identify accounting authorities to the International Telecommunications Union (ITU). Respondents are entities seeking certification or those already certified to be accounting authorities.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21404 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

October 17, 2005.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington DC, 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0169.

OMB Approval date: August 24, 2005.

Expiration Date: August 31, 2008.

Title: Sections 43.51 and 43.53—Reports and Records of Communications Common Carriers and Affiliates.

Form No.: N/A.

Estimated Annual Burden: 374 responses; 6,029 total annual burden hours; approximately 83–101 hours average per respondent.

Needs and Uses: The Commission received an extension with no change for this information collection. Section 43.51 requires any communication common carrier described in paragraph (b) of this section must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and any amendments. In addition to other reporting requirements, this rule section also requires an annual reporting requirement, third party disclosure requirement and recordkeeping requirements. Section 43.53 requires each communication common carrier engaged directly in the transmission or reception of telegraph communications between the continental United States and any foreign country shall file a report with the Commission within thirty (30) days of the date of any arrangement concerning the division of the total telegraph charges on such communications other than transiting.

OMB Control No.: 3060–0793.

OMB Approval date: September 20, 2005.

Expiration Date: September 30, 2008.

Title: Federal-State Joint Board on Universal Service, CC Docket No. 96–45, Procedures for Self Certifying as a Rural Carrier.

Form No.: N/A.

Estimated Annual Burden: 10 responses; 10 total annual burden hours; 1 hour per respondent.

Needs and Uses: In the Tenth Report and Order, the Commission adopted proposals that carriers servicing study areas with fewer than 100,000 access lines that already have certified their

rural status need not re-certify for purposes of receiving support beginning January 1, 2001 and need only file thereafter if their status changes. Further, carriers serving more than 100,000 access lines need to file rural certifications for their year 2001 status and thereafter only if their status has changed.

The Commission received an extension with no change to this information collection.

OMB Control No.: 3060–0515.

OMB Approval date: September 21, 2005.

Expiration Date: September 30, 2008.

Title: Section 43.21(c), Miscellaneous Common Carrier Annual Letter Filing Requirement.

Form No.: N/A.

Estimated Annual Burden: 38 responses; 38 total annual burden hours; 1 hour per respondent.

Needs and Uses: Section 43.21(c) requires each miscellaneous common carrier with operating revenues in excess of the indexed threshold as defined in *47 CFR 32.9000* for a calendar year to file with the Chief, Wireline Competition Bureau (formerly the Common Carrier Bureau) a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. The letter must be filed no later than April 1 of the following year. The information is used by FCC staff members to regulate and monitor the telephone industry and by the public to analyze the industry. The information on revenues and total plant is compiled and published in the Commission's annual common carrier statistical publication and trends in telephone service report.

The Commission received an extension with no change to this information collection.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21405 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 05–2731]

Announcement of Next Meeting Date and Agenda of Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice; announcement of meeting.

SUMMARY: This document announces the next meeting date and agenda of the Consumer Advisory Committee. The purpose of the Committee is to make recommendations to the Federal Communications Commission (''Commission'') regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

DATES: The next meeting of the Committee will take place on Friday, November 18, 2005, from 9 a.m. to 4 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, (202) 418–2809 (voice), (202) 418–0179 (TTY) or e-mail: *scott.marshall@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice* DA 0–2731 released October 18, 2005. The Commission announced the next meeting date and meeting agenda of its Consumer Advisory Committee.

Purpose and Functions

The purpose of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

Meeting Agenda

At its November 18, 2004 meeting, the Committee will (1) receive briefings by FCC staff regarding Agency activities; (2) receive a report and recommendations from its TRS Working Group regarding access to VRS networks; and (3) receive a report and recommendations from its Media working group regarding public interest obligations related to digital television. The full Committee may take action on any or all of these agenda items.

A copy of the October 18, 2005, Public Notice is available in alternate formats (Braille, cassette tape, large print or diskette) upon request. It is also posted on the Commission's Web site at *www.fcc.gov/cgb/cac.* Meeting minutes will be available for public inspection at the FCC headquarters building.

The Committee meeting will be open to the public and interested persons may attend the meeting and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Written comments for the Committee may also be sent to the Committee's Designated Federal Officer, Scott Marshall.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Meeting agendas and handouts will be provided in accessible format; sign language interpreters, open captioning, and assistive listening devices will be provided on site. The meeting will be webcast with open captioning at *http://www.fcc.gov/cgb/cac.* Request other reasonable accommodations for people with disabilities as early as possible; please allow at least 14 days advance notice. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Federal Communications Commission.

Monica Desai,

Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 05–21403 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 02–55; DA 05–2390]

Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding; NPSPAC Regions Assigned to Wave 2

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: As part of the 800 MHz band reconfiguration process, the Commission stated that it would issue a public notice thirty days before reconfiguration is scheduled to start in each National Public Safety Planning Advisory Committee (NPSPAC) region. Each such public notice will specify a three-month voluntary negotiation period during which time identified licensees in the regions being reconfigured are encouraged to reach agreement with Nextel on the details of relocating. The voluntary negotiation period would be followed by a three-month mandatory negotiation period, if necessary. The Commission also stated that it would freeze the filing of certain 800 MHz applications for the regions being reconfigured when it issued a public notice announcing the date when voluntary negotiation of relocation agreements must be concluded. The Commission explained that this freeze is

necessary in order to maintain a stable spectral landscape during the reconfiguration process in each region.

DATES: This *Notice* announces that 800 MHz band reconfiguration for NPSPAC Regions in Wave 2 commenced on October 3, 2005.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, *Roberto.Mussenden@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of a public notice released on September 2, 2005.

1. In July 2004, the Federal Communications Commission (Commission) adopted a *Report and Order* in this docket which, *inter alia*, reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band. *See* 69 FR 67823, November 22, 2004, modified by 70 FR 6758, February 8, 2005. As specified in the *Report and Order*, the band reconfiguration process is being overseen by a Transition Administrator (TA) which has provided the Commission with a plan detailing when band reconfiguration will commence in each of the fifty-five 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) regions. On March 11, 2005, the Bureau approved the TA's basic 800 MHz band reconfiguration schedule, *i.e.*, the grouping of the NPSPAC regions into four waves (Waves 1–4) and starting the reconfiguration process in each wave on the dates recommended by the TA. *See* 70 FR 21786, April 27, 2005.

2. As part of the 800 MHz band reconfiguration process, the Commission stated that it would issue a *Public Notice* thirty days before reconfiguration is scheduled to start in each NPSPAC region. Each such *Public Notice* specifies a three-month voluntary negotiation period during which time identified licensees in the regions being reconfigured are encouraged to reach agreement with Nextel on the details of relocating. The voluntary negotiation period is followed by a three-month mandatory negotiation period, if necessary. The Commission also stated that it would freeze the filing of certain 800 MHz applications for the regions being reconfigured when it issued a *Public Notice* announcing the date when voluntary negotiation of relocation agreements must be concluded. The Commission explained that this freeze is necessary in order to maintain a stable spectral landscape during the reconfiguration process in each region. The Commission delegated authority to issue these *Public Notices* to the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau (WTB).

3. On May 27, 2005, WTB released a *Public Notice* announcing the reconfiguration start date for the NPSPAC regions assigned to Wave 1 (*i.e.*, for the non-NPSPAC channels therein). *See* 70 FR 34764–02, June 15, 2005. This *Wave 1 PN* also specified the 800 MHz reconfiguration benchmark compliance dates. By this *Public Notice*, we announce that the 800 MHz band reconfiguration process for non-NPSPAC channels will start October 3, 2005, in the NPSPAC regions assigned to Wave 2. A list of NPSPAC regions assigned to Wave 2 is attached below. The three-month period during which non-NPSPAC 800 MHz licensees have the option of negotiating on a voluntary basis will end January 2, 2006. The three-month mandatory negotiation period will end April 2, 2006.

4. We also announce by this *Public Notice* that, effective immediately, we are freezing the filing of 800 MHz applications for non-NPSPAC channels in Wave 2. The freeze applies to stations located in all of the NPSPAC regions assigned to Wave 2 and to stations within seventy miles of the borders of the Wave 2 regions. This freeze is effective on the release date of this *Public Notice* and will last until thirty working days after the date for completion of mandatory negotiations as specified above, *i.e.*, until May 12, 2006. The freeze does not apply to modification applications filed to implement 800 MHz band reconfiguration, modification applications filed that do not change an 800 MHz frequency or expand a 800 MHz station's existing coverage area (*e.g.*, administrative updates), assignments/transfers, or renewal-only applications.

5. To facilitate the 800 MHz reconfiguration process, the Commission has established the following new radio service codes for licenses that list 800 MHz band frequencies governed by part 90 of the Commission's Rules:

Site specific licenses:

- Public safety (conventional)—GE
- Public safety (trunked)—YE
- Business/Industrial/Land Transportation (conventional)—GJ
- Business/Industrial/Land Transportation (trunked)—YJ
- SMR (conventional)—GM and GL (The GL code is used only for applications listing both 800 MHz and 900 MHz frequencies)
- SMR (trunked)—YM and YL (The YL code is used only for applications listing both 800 MHz and 900 MHz frequencies)

Geographic area licenses:

- SMR, market area—YH and CY (The CY code is used only for applications listing both 800 MHz and 1.9 GHz frequencies)

APPENDIX.—NPSPAC REGIONS ASSIGNED TO WAVE 2

NPSPAC region [1]	Description of region [2]
4	Arkansas.
12	Idaho.
15	Iowa.
16	Kansas.
17	Kentucky.
22	Minnesota.
24	Missouri.
25	Montana.
26	Nebraska.
32	North Dakota.
34	Oklahoma.
38	South Dakota.
39	Tennessee.
40	Texas (Central & Northeast).
44	West Virginia.
46	Wyoming.
47	Puerto Rico.
48	U.S. Virgin Islands.
49	Texas (Central—Austin area).
51	Texas (East—Houston area).
52	Texas (Panhandle, High Plains & Northwest-Lubbock area).
*	Large non-public safety systems that cover multiple NPSPAC regions. [3]

[1] Per the TA's request, we are moving the Louisiana NPSPAC region (#18) from Wave 2 to Wave 3. *See* letter from Bob Kelly to Michael Wilhelm, Chief Public Safety and Critical Infrastructure Division, dated September 2, 2005.

[2] Regions that are only a portion of a state or states are defined by counties. A list of the counties in each of these regions can be accessed at *http://www.fcc.gov/Bureaus/Wireless/Orders/1998/fcc98191.txt*.

[3] Large non-public safety systems that had no systems in Wave 1 and that provide coverage beyond the border of NPSPAC regions in Wave 2 will commence reconfiguration of their entire system, including base stations located outside the boundaries of Wave 2 NPSPAC regions, as part of the Wave 2 reconfiguration process.

6. The Commission's Universal Licensing System (ULS) will automatically update modification applications filed to implement 800 MHz band reconfiguration to show the appropriate new radio service code (*i.e.*, applicants should file using their current radio service codes). Once the radio service code has been changed on the license by the Commission, licensees filing subsequent applications concerning that license must use the new radio service code.

7. The Reconfiguration Plan filed by the TA is available on the Commission's 800 MHz band reconfiguration Web page at *http://www.800MHz.gov*. Questions concerning the plan, and other Transition Administrator matters, including whether your 800 MHz system must be relocated, should be directed to Brett Haan, BearingPoint, 1676 International Drive, McLean, VA 22102, *Brett.Haan@800ta.org*. For additional information on 800 MHz band reconfiguration issues, generally, please contact Roberto Mussenden, Esq., Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, at (202) 418–0680, TTY (202) 418–7233, or via e-mail to *Roberto.Mussenden@fcc.gov*.

Federal Communications Commission.

Scot Stone,

Deputy Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau.

[FR Doc. 05–21297 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2730]

Petitions For Reconsideration Of Action In Rulemaking Proceeding

October 13, 2005.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by November 10, 2005. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Auction of Direct Broadcast Satellite Licenses (WT Docket No. 05–251).

Number Of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21207 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2729]

Petitions for Reconsideration of Action in Rulemaking Proceeding

October 13, 2005.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by November 10, 2005. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of the 2000 Biennial Regulatory Review Streamlining and Other Revisions of Part 25 of the Commission's Rule Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations (IB Docket No. 00–248).

In the Matter of Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed-Satellite at Reduced Orbital Spacings and to Revise Application Procedures for Satellite Communication Services (CC Docket No. 86–496).

Number of Petitions Filed: 3.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21208 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Performance Review Board

As required by the Civil Service Reform Act of 1978 (Pub. L. 95–454), Chairman Kevin J. Martin appointed the following executives to the Performance Review Board (PRB): Michelle Carey, Thomas Navin, and Monica Desai.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–20999 Filed 10–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov).*

Agreement No.: 009857–009.

Title: Florida-Caribbean Cruise Association (''FCCA'').

Parties: Carnival Cruise Lines; Celebrity Cruises; Costa Cruise Lines; Cunard Line; Disney Cruise Line; Holland America Line; Norwegian Cruise Line; Princess Cruises; Radisson Seven Seas Cruises; Royal Caribbean International; Topaz International Cruises; Windstar Cruises; and MSC Cruises (USA) Inc.

Filing Party: Matthew Thomas, Esq.; Troutman Sanders LLP; 401 9th Street NW; Suite 1000; Washington, DC 20004–2134.

Synopsis: The subject modification would revise the agreement authority to more clearly describe the FCCA's activities, delete authority for the members to take joint action on rates and charges, update the membership list and contact information, and republish the agreement.

Agreement No.: 011843–001.

Title: LT/ZIM Cross Space Charter and Sailing Agreement.

Parties: Lloyd Triestino di Navigazione S.p.A. and Zim Integrated Shipping Services, Ltd.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway; Suite 3000; New York, NY 10006–2802.

Synopsis: The modification updates Zim's corporate name.

Agreement No.: 011922.

Title: TNWA/GA Cooperative Working Agreement.

Parties: APL Co. Pte. Ltd./American President Lines, Ltd.; Hyundai Merchant Marine Co., Ltd.; Mitsui O.S.K. Lines, Ltd.; Hapag-Lloyd Container Linie GmbH; Nippon Yusen Kaisha; and Orient Overseas Container Line Limited/Orient Overseas Container Line Inc./Orient Overseas Container Line (Europe) Limited.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street NW; Suite 900; Washington, DC 20036.

Synopsis: The proposed agreement would authorize the parties to share

vessel space and engage in related rationalization, coordination, and cooperative activities in the trade between ports in North Asia and ports on the U.S. Atlantic Coast via the Panama Canal.

Dated: October 21, 2005.

By order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 05–21380 Filed 10–25–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicant

Intercontinental Logistics, Inc., 500 E. Carson Plaza Drive, Suite 107, Carson, CA 90745, *Officer:* Ki Chul Kim, President, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

La Gaviota Shipping, 468 Roseville Avenue, Newark, NJ 07107, Manuel S. Alvarez, Sole Proprietor.

IGX International, Inc., Acuarela St., #3A, Martinez Nadal Highway, Guaynabo, PR 00966, *Officers:* Lemuel Toledo Gonzalez, President, (Qualifying Individual), Providencia Gonzalez, Vice President.

Dated: October 21, 2005.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 05–21379 Filed 10–25–05; 8:45 am]

BILLING CODE 6730–01–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 November 10, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Bonifay Holding Company, Inc., Bonifay, Florida; W. Stephen Thames Marianna, Florida, Roy C. Belcer Family Trust, William T. Parrish, Trustee, Bonifay, Florida; to retain control of Bonifay Holding Company, Inc., Bonifay, Florida, and thereby indirectly retain shares of The Bank of Bonifay, Bonifay, Florida.

Board of Governors of the Federal Reserve System, October 21, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–5953 Filed 10–25–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 2005

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Fulton Financial Corporation, Lancaster, Pennsylvania; to acquire 100 percent of the voting shares of Columbia Bancorp, Columbia, Maryland, and thereby indirectly acquire The Columbia Bank, Columbia, Maryland.

B. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Pinnacle Financial Partners, Inc., Nashville, Tennessee, to merge with Cavalry Bancorp, Inc., and thereby indirectly acquire Cavalry Banking, both of Murfreesboro, Tennessee.

C. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Buena Vista Bancorp, Inc., Chester, Illinois; to acquire 100 percent of the voting shares of Citizens Community Bank of Decatur, Decatur, Illinois.

Board of Governors of the Federal Reserve System,

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–5954 Filed 10–25–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 10, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Chestatee Bancshares, Inc., Dawsonville, Georgia, to continue to engage through Chestatee Financial Services, Inc., Dawsonville, Georgia, in securities brokerage activities and the sale of insurance in a town of less than 5,000 persons, pursuant to sections 225.28(b)(7)(i) and 225.28(b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, October 21, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–5955 Filed 10–25–05; 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: 12 p.m., Monday, October 31, 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, October 21, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–21419 Filed 10–21–05; 4:16pm]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0263]

Agency Information Collection Activities: Proposed Collection; Comment Request

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.

#1 Type of Information Collection Request: Extension of Currently Approved Collection;

Title of Information Collection: Protection of Human Subjects Assurance Identification/ Institutional Review Board (IRB) Certification/ Declaration of Exemption;

Form/OMB No.: OS–0990–0263;

Use: The Federal Policy for the Protection of Human Subjects, known as the Common Rule, requires that before engaging in non-exempt human subjects research that is conducted or supported by a Common Rule department or agency, each institution must: (1) Hold an applicable assurance of compliance [Section 103(a)]; and (2) certify to the awarding department or agency that the application or proposal for research has been reviewed and approved by an IRB designated in the assurance [Sections 103(b) and (f)].

Frequency: Reporting on occasion;

Affected Public: Federal, State, local, or tribal governments, business or other for-profit, not-for-profit institutions and individuals or households;

Annual Number of Respondents: 5,000;

Total Annual Responses: 166,667;

Average Burden Per Response: 0.25 hours;

Total Annual Hours: 41,667;

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 within 30 days of this notice directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–0263), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 17, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–21356 Filed 10–25–05; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel; Meeting

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Enhancing Utilization of Childhood Immunization Client Recall Practices by Private Providers, RFA; IP 05–088; Improving Vaccination Coverage in the Greater than 65 Years of Age Population, RFA IP 05–091; Influenza Vaccination of Children and Accompanying Adults: Mass Vaccination versus Vaccination in Routine Care, RFA IP 05–094; Effectiveness of a Hospital Based Program for Vaccination of Birth Mothers and Household Contacts with Inactivated Influenza Vaccine, RFA; IP 05–095; and Developing Methods and Strategies to Increase Use of Immunization Registries by Private Providers, RFA IP 05–096.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Enhancing Utilization of Childhood Immunization Client Recall Practices by Private Providers, RFA IP 05–088; Improving Vaccination Coverage in the Greater than 65 Years of Age Population, RFA IP 05–091; Influenza Vaccination of Children and Accompanying Adults: Mass Vaccination versus Vaccination in Routine Care, RFA IP 05–094; Effectiveness of a Hospital Based Program for Vaccination of Birth Mothers and Household Contacts with Inactivated Influenza Vaccine, RFA IP 05–095; and Developing Methods and Strategies to Increase Use of Immunization Registries by Private Providers, RFA IP 05–096.

Times and Dates: 8 a.m.–5 p.m., November 21, 2005 (Closed).

Place: Renaissance Hotel, 1 Hartsfield Center Parkway, Atlanta, GA 30354, Telephone 404.209.9999.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Enhancing Utilization of Childhood Immunization Client Recall Practices by Private Providers, RFA IP 05–088; Improving Vaccination Coverage in the Greater than 65 Years of Age Population, RFA IP 05–091; Influenza Vaccination of Children and Accompanying Adults: Mass Vaccination versus Vaccination in Routine Care, RFA IP 05–094; Effectiveness of a Hospital Based Program for Vaccination of Birth Mothers and Household Contacts with Inactivated Influenza Vaccine, RFA IP 05–095; and Developing Methods and Strategies to Increase Use of Immunization Registries by Private Providers, RFA IP 05–096.

FOR FURTHER INFORMATION CONTACT: Horace M. Stiles, PHD MPH DDS, Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., MS E–74, Atlanta, GA 30333, Telephone 404–498–2584.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 19, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–21341 Filed 10–25–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 16, 2005, from 8:30 a.m. to 5:15 p.m. and on November 17, 2005, from 8:30 a.m. to 5:30 p.m.

Location: Holiday Inn Select, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Christine Walsh or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 16, 2005, the committee will hear presentations and discuss the use of Madin-Darby Canine Kidney Cells for manufacture of Inactivated Influenza Vaccines. On November 17, 2005, the committee will discuss developing new Pneumococcal Vaccines for U.S. licensure for adults.

Procedure: On November 16, 2005, from 8:30 a.m. to 5:15 p.m. and on November 17, 2005, from 10 a.m. to 5:30 p.m., the meeting is open to the public. 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 November 9, 2005. Oral presentations from the public will be scheduled on November 16, 2005, between approximately 1:45 p.m. and 2:15 p.m. and on November 17, 2005, between approximately 1 p.m. and 1:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 9, 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.

Closed Committee Deliberations: On November 17, 2005, from 8:30 a.m. to 9:55 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

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 Christine Walsh or Denise Royster 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: October 18, 2005.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. 05–21350 Filed 10–25–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0392]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Cystic Fibrosis Transmembrane Conductance Regulator Gene Mutation Detection Systems; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance document entitled ''Class II Special Controls Guidance Document: CFTR Gene Mutation Detection Systems.'' This guidance document describes a means by which cystic fibrosis transmembrane conductance regulator (CFTR) gene mutation detection systems may comply with the requirements of special controls for class II devices. It includes recommendations for validation of performance characteristics and recommendations for product labeling. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify CFTR gene mutation detection systems into class II (special controls). This guidance document is immediately in effect as the special control for CFTR gene mutation detection systems, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: CFTR Gene Mutation Detection Systems'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Zivana Tezak, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0597.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying CFTR gene mutation detection systems into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for CFTR gene mutation detection systems. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs regulation (§ 10.115). The guidance represents the agency's current thinking on CFTR gene mutation detection systems. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''Class II Special Controls Guidance Document: CFTR Gene Mutation Detection Systems'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1564) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. The Center for Devices and Radiological Health (CDRH) maintains an entry on the Internet for easy access to information, including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications, and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance 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). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

V. Comments

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

Dated: October 17, 2005.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 05–21349 Filed 10–25–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0307] (formerly 02D–0307)

Guidance for Industry on Potassium Chloride Modified-Release Tablets and Capsules: In Vivo Bioequivalence and In Vitro Dissolution Testing; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Potassium Chloride Modified-Release Tablets and Capsules: In Vivo Bioequivalence and In Vitro Dissolution Testing.'' This guidance document provides recommendations to sponsors of abbreviated new drug applications (ANDAs) on the design of bioequivalence studies for modified-release dosage forms of potassium chloride.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Lizzie Sanchez, Center for Drug Evaluation and Research (HFD–650), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5847.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Potassium Chloride Modified-Release Tablets and Capsules: In Vivo Bioequivalence and In Vitro Dissolution Testing.'' This guidance is intended to provide information to sponsors of ANDAs on the design of bioequivalence studies for modified-release dosage forms of potassium chloride.

A document entitled ''Guidance for In Vivo Bioequivalence Study for Slow-Release Potassium Chloride Tablets/Capsules'' was issued on May 15, 1987 (1987 guidance), and revised on June 6, 1994 (1994 revision). The guidance was further revised to incorporate FDA's current thinking on the bioequivalence requirements for potassium chloride modified-release products and was issued in draft on August 7, 2002 (2002 draft guidance) (67 FR 51284). Comments were reviewed and incorporated. The most substantive changes made are described in the following paragraphs. Editorial changes were also made and the final guidance is now available.

In the 2002 draft guidance, the agency recommended a three-way crossover design study comparing the reference listed drug (RLD) to both the generic product and a solution of potassium chloride. The 2002 draft guidance also recommended analysis of covariance (ANCOVA) for the pharmacokinetic parameters.

The final guidance provides recommendations for a two-way crossover design comparing the generic product to the RLD. This design is consistent with the 1994 revision, which stated that the potassium chloride solution mentioned in the 1987 guidance was no longer necessary and recommended the use of a two-treatment, two-period, single-dose, fasting study comparing test product with reference product. The FDA determined that the potassium chloride solution arm is not necessary because the objective of the bioequivalence study is to directly compare the rate and extent of potassium absorption from the test product and the reference product. Therefore, the potassium chloride solution arm is not necessary for the test-versus-reference comparison and adds unnecessary complexity to the statistical bioequivalance analysis.

We also have decided not to recommend the use of ANCOVA in the final guidance. Analysis of variance (ANOVA) with baseline correction is adequate for bioequivalence analysis of pharmacokinetic data obtained following oral administration of potassium chloride drug products. The FDA concluded that using ANCOVA with baseline as a covariate to analyze baseline-uncorrected data was not as sensitive to changes in formulation performance as using ANOVA to analyze baseline-corrected data.

The dissolution testing and criteria for waivers on in vivo testing for lower strengths are revised to reflect the changes outlined in the guidance entitled ''Bioavailability and Bioequivalence Studies for Orally Administered Drug Products—General Considerations,'' available on the Internet at *http://www.fda.gov/cder/guidance/index.htm*.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on studies to demonstrate the bioequivalence of potassium chloride modified-release tablets and capsules. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. 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 guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: October 18, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–21347 Filed 10–25–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2005–21866]

Extension Agency Information Collection Activity Under OMB Review: Enhanced Security Procedures at Ronald Reagan National Airport (DCA)

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on August 26, 2005, 70 FR 50391.

DATES: Send your comments by November 25, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Enhanced Security Procedures at Ronald Reagan National Airport (DCA).

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0035.

Forms(s): ''Flight Authorization Request Form,'' ''Armed Security Officer Nomination Form,'' ''FBO and Operator Initial Information Survey.''

Affected Public: General aviation aircraft operators, crewmembers, and passengers.

Abstract: On July 19, 2005, TSA published an interim final rule (IFR) to restore access to Ronald Reagan National Airport (DCA) for certain aircraft operations while maintaining the security of critical Federal Government and other assets in the Washington, DC metropolitan area. The IFR amended 49 CFR part 1562 by adding a new subpart B entitled Ronald Reagan-Washington National Airport: Enhanced Security Procedures for Certain Operations. The IFR and this information collection apply to all passenger aircraft operations into or out of DCA, except U.S. air carrier operations operating under a full security program required by 49 CFR part 1544 and foreign air carrier operations operating under 49 CFR 1546.101(a) or (b). TSA requires individuals designated as security coordinators by Fixed Based Operators (FBOs) and general aviation aircraft, flight crewmembers who operate general aviation aircraft into and out of DCA in accordance with the IFR, and armed security officers (ASOs) approved in accordance with the IFR to submit fingerprints and other identifying information. In addition, general aviation aircraft operators are required to provide TSA with identifying information for all individuals onboard each aircraft that operates into and out of DCA. General aviation aircraft operators also are required to provide TSA with the flight plan and registration number of their aircraft that will operate to or from DCA. Finally, aircraft operators and FBOs are required to nominate the individuals they would like to be qualified as ASOs by submitting an ASO Nomination Form to TSA. Once nominated, the ASOs are required to submit identifying information, as well as employment history information, by completing an on-line application.

Number of Respondents: 2,025.

Estimated Annual Burden Hours: An estimated 13,298 hours annually.

Issued in Arlington, Virginia, on October 19, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–21364 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2352–05]

RIN 1615–ZA23

Adjustment of the Immigration Benefit Application Fee Schedule; Correction

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice of correction.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS) published a notice in the **Federal Register** on September 26, 2005 at 70 FR 56182 to increase the fees for immigration benefit applications and petitions to account for cost increases due to inflation. In the fee table of the September 26, 2005 notice, USCIS added a footnote ''6'' next to the new fee for the Form N–600K. Footnote ''6'' shows an increase in fee from $200 to $215 for an application filed on behalf of an adopted child (as compared to the base fee increase from $240 to $255). The placement of this footnote and its lack of specificity regarding which ''application'' it was meant to

refer to have created some ambiguity regarding the adopted child fee for the Form N–600, which similarly was adjusted from $200 to $215 (as compared to the new base fee of $255 referenced in the Notice). Accordingly, this notice clarifies the prior notice by amending footnote ''6'' to state specifically that it refers to both the Form N–600 and the Form N–600K.

DATES: This correction is effective October 26, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Director, Office of Budget, U.S. Citizenship and Immigration Services, 20 Massachusetts Ave., NW., Suite 4052, Washington, DC 20529, telephone (202) 272–1930.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published in the **Federal Register** on September 26, 2005 (70 FR 56182), the Notice contains an error that is in need of correction for the purpose of clarifying the Notice.

Correction of Publication

Accordingly, the publication on September 26, 2005 (70 FR 56182), of the Notice that was the subject of FR Doc. 05–19226 is corrected as follows:

1. On page 56184, immediately after the table, amend footnote ''6'' by striking ''an application'' and inserting ''a Form N–600 or Form N–600K''.

Dated: October 24, 2005.

Stephen Tarragon,

Acting Director, Regulatory Management Division.

[FR Doc. 05–21483 Filed 10–24–05; 1:57 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971-N–54]

Notice of Submission of Proposed Information Collection To OMB; Consumer Perceptions of Factory-Built Housing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This request is for the clearance of a survey instrument that would gauge current consumer perceptions of factory-built housing technologies with as primary focus on panelized and modular housing. One of the strategic goals outlined in HUD's Partnership for Advancing Technology in Housing is the increased focus on attitudes, behaviors, and motives surrounding innovation. Measuring consumer perceptions of factory-build housing provides such insight, and will also provide otherwise unavailable information essential to measuring the effectiveness of PATH's outreach and promotional campaigns.

DATES: *Comments Due Date:* November 25, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528—Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Consumer Perceptions of Factory-Built Housing.

OMB Approval Number: 2528—Pending.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use

This request is for the clearance of a survey instrument that would gauge current consumer perceptions of factory-built housing technologies with as primary focus on panelized and modular housing. One of the strategic goals outlined in HUD's Partnership for Advancing Technology in Housing is the increased focus on attitudes, behaviors, and motives surrounding innovation. Measuring consumer perceptions of factory-build housing provides such insight, and will also provide otherwise unavailable information essential to measuring the effectiveness of PATH's outreach and promotional campaigns.

Frequency of Submission: Once Only.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,500	1		0.276		690

Total Estimated Burden Hours: 690.
Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 19, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–5920 Filed 10–25–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–021–1040–PH–021H: G–5–0180]

Emergency Closure of Public Lands: Harney County, OR

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that certain public lands are temporarily closed to public use for the purpose of discharge of firearms, from September 1, 2005 to August 31, 2006. The authorized BLM officer has determined that shooting within one-quarter mile of Frenchglen, Oregon, may be a safety hazard to the residents. During the closure period, BLM will prepare National Environmental Policy Act documentation to consider a permanent closure.

The closed area occurs on BLM land around Frenchglen, Oregon, in Willamette Meridian, T. 32 S., R. 32 E., Section 02, Lots 3 and 4 east of the 115 kV power transmission line OR–012617, S½NW¼ east of the 115kV power transmission line OR–012617, N½SW¼ north of Hwy 205, E½SW¼ east of Elbow Springs Road, SW¼SE¼ east of Elbow Springs Road.

Closure signs will be posted at main entry points to the area and along the boundary as necessary. Maps of the closure area and information may be obtained from the BLM Burns District Office and at various locations in Burns, Hines, and Frenchglen.

DATES: The emergency closure will take effect from September 1, 2005 to August 31, 2006.

FOR FURTHER INFORMATION CONTACT: Karla Bird, Andrews Resource Area Field Manager, BLM, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, (541) 573–4400.

Discussion of the Rules: Pursuant to 43 CFR 8364.1 the following is prohibited on lands administered by BLM within the closed area of Andrews Resource Area:

Discharge of firearms or other device capable of firing a projectile into or within the closed area posted ''No Shooting or Safety Zone.''

Penalties: The enforcement authority for this closure is found under Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7. Any person who violates this closure may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: July 21, 2005.

Karla Bird,

Andrews Resource Area Field Manager.

[FR Doc. 05–21393 Filed 10–25–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–134–1610–DQ]

Notice of Extension of the Call for Nominations for the McInnis Canyons National Conservation Area (NCA) Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is extending the call for nominations for ten membership positions on the McInnis Canyons National Conservation Area Advisory Council. The original notice calling for nominations published in the **Federal Register** on September 14, 2005 [70 FR 54403]. The original deadline for the call for nominations was October 14, 2005. The purpose of this notice is to extend the nomination period until October 31, 2005. The Council advises the Secretary and the BLM on resource management issues associated with the McInnis Canyons NCA and Black Ridge Canyons Wilderness.

DATES: Submit a completed nomination form and nomination letters to the address listed below no later than October 31, 2005.

ADDRESSES: Send completed nominations to: McInnis Canyons NCA Manager, Grand Junction Field Office, Bureau of Land Management, 2815 H Road, Grand Junction, CO 81506.

FOR FURTHER INFORMATION CONTACT: Maggie Langlas, Program Analyst NLCS, (202) 491–9725, *margaret_langlas@blm.gov.*

Dated: October 17, 2005.

Holly Hampton,

Acting Group Manager, National Monuments and National Conservation Areas, National Landscape Conservation System.

[FR Doc. 05–21398 Filed 10–25–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Initiation of the Nomination and Selection Process for the Pinedale Anticline Working Group, Sublette County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for two individuals to serve as members of the Pinedale Anticline Working Group (PAWG) as part of the adaptive environmental management program for the Pinedale Anticline Project Area in Southwestern Wyoming. The PAWG has two vacancies on its advisory group for which the Bureau of Land Management (BLM) is seeking nominees: A public-at-large member and a representative from the Sublette County Government.

DATES: All nominations should be postmarked before or on the date 30 days from the publication of this notice in the **Federal Register**. Final selections will be made by the Secretary of the Interior and serve at her discretion.

ADDRESSES: You can obtain information and a copy of the Notice for the Nomination and Selection process by writing or visiting the following offices: Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003; Bureau of Land Management, Pinedale Field Office, 432 East Mill Street, P.O. Box 768, Pinedale, Wyoming 82941.

SUMMARY: On August 15, 2002, the Secretary of the Interior signed the Charter to establish the Pinedale Anticline Working Group (PAWG). Several interest groups, governmental agencies, and local interests are represented on the PAWG. Individuals or groups interested in completing the remainder of the 2-year membership term of the PAWG should submit the specified information within 30 days of publication of this notice in the **Federal Register**.

Nominations and supporting documentation should be sent to: Bureau of Land Management, Pinedale Field Office, ATTN: Mike Stiewig,

PAWG Coordinator, P.O. Box 768, Pinedale, Wyoming 82941.

FOR FURTHER INFORMATION CONTACT: Mike Stiewig, PAWG Coordinator, BLM, Pinedale Field Office, P.O. Box 768, Pinedale, Wyoming 82941, telephone (307) 367–5363.

SUPPLEMENTARY INFORMATION: On August 15, 2004, the Secretary of the Interior renewed the Charter that established the Pinedale Anticline Working Group. Members were appointed for a 2-year term on May 24, 2004. There are currently two vacancies for members whose term would be completed on May 24, 2006. The Charter establishes several membership selection criteria and operational procedures for the PAWG. These are listed as follows:

(1) The PAWG will be composed of 9 members who reside in the State of Wyoming. The PAWG members will be appointed by and serve at the pleasure of the Secretary of Interior.

(2) Members of the PAWG will be as follows:

- A representative from the State of Wyoming Office of Federal Land Policy.
- A representative from the Town of Pinedale.
- A representative from the oil/gas operators active in the Pinedale Anticline area.
- A representative from the Sublette County Government.
- A representative from statewide or local environmental groups.
- A representative from the landowners within or bordering the Pinedale Anticline area.
- A representative of livestock operators operating within or bordering the Pinedale Anticline area.
- Two members from the public-at-large.

(3) Members should have demonstrated an ability to analyze and interpret data and information, evaluate proposals, identify problems, and promote the use of collaborative management techniques (such as, long term planning, management across jurisdictional boundaries, data sharing, information exchange, and partnerships), and a knowledge of issues involving oil and gas development activities.

(4) PAWG members will be appointed for 2-year terms, subject to removal by the Secretary of the Interior. At the discretion of the Secretary of the Interior, members may be reappointed to additional terms.

Individuals who wish to become a member of the PAWG should complete and submit the following information to the Pinedale Field Office by close of business, 30 days after the publication of this notice in the **Federal Register:**

A. Representative Groups: *Public-at-large member and representative from Sublette County government.*

B. Nominee's Full Name:

C. Business Address:

D. Business Phone:

E. Home Address:

F. Home Phone:

G. Occupation/Title:

H. Qualifications (education including colleges, degrees, major field of study and/or training):

I. Career Highlights (significant related experience, civic and professional activities, elected offices, prior advisory committee experience, or career achievements related to the interest to be represented):

J. Experience in collaborative management techniques, such as long term planning, management across jurisdictional boundaries, data sharing, information exchange and partnerships:

K. Experience in data analysis and interpretation, problem identification and evaluation of proposals:

L. Knowledge of issues involving oil and gas development:

M. Indicate Specific Area of Interest to be Represented from the following: *One representative from the public-at-large or one representative from Sublette County Government.*

N. List any leases, license, permits, contracts or claims that you hold which involve lands or resources administered by the BLM:

O. Attach two or three Letters of Reference from interests or organization to be represented:

P. Nominated by: Include Nominator's name, address and telephone number(s), if applicable.

Q. Date of nomination:

Dated: September 16, 2005.

Robert A. Bennett,

State Director.

[FR Doc. 05–21390 Filed 10–25–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–038–1220–AL; HAG 06–0010]

Meeting Notice for National Historic Oregon Trail Interpretive Center Advisory Board

AGENCY: U.S. Department of the Interior, Bureau of Land Management, Vale District.

SUMMARY: The National Historic Oregon Trail Interpretive Center Advisory Board will meet December 6, 2005, 8 a.m. to 12 p.m. (PST) at the Best Western Sunridge Inn, One Sunridge Way, Baker City, Oregon.

Meeting topics will include a Center Update, Marketing, and other topics as may come before the board. The meeting is open to the public. Public comment is scheduled for 10 to 10:15 a.m.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the National Historic Oregon Trail Interpretive Center Advisory Board may be obtained from Debbie Lyons, Public Affairs Officer, Bureau of Land Management Vale District Office, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218, e-mail: *Debra_Lyons@or.blm.gov*.

Dated: October 20, 2005.

David R. Henderson,

District Manager.

[FR Doc. 05–21336 Filed 10–25–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–1430–ET; WIES 032707]

Notice of Proposed Withdrawal Extension and Correction of Public Land Order No. 6619; Opportunity for Public Meeting; Wisconsin

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As required by 43 CFR 2310.3–1, notice is hereby given that the Bureau of Land Management (BLM) proposes to extend Public Land Order (PLO) No. 6619 for an additional 20-year period. This order withdrew 4,107 acres of public land in Juneau County, Wisconsin, from surface entry and reserved the land for use by the U.S. Fish and Wildlife Service to manage in conjunction with the Necedah National Wildlife Refuge. This notice also gives an opportunity to comment on the proposed action and to request a public meeting. This notice also corrects an error in the legal description published in the **Federal Register** on July 25, 1986 (51 FR 26687).

DATES: Comments and requests for a public meeting must be received by January 24, 2006.

ADDRESSES: Comments and meeting requests should be sent to the State Director, BLM-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153.

FOR FURTHER INFORMATION CONTACT: Ed Ruda, BLM-Eastern States, 703–440–1663.

SUPPLEMENTARY INFORMATION: The withdrawal created by PLO No. 6619

will expire on July 24, 2006, unless extended. The U.S. Fish and Wildlife Service has filed an application to extend PLO No. 6619. This withdrawal was made to allow management of the following described land as part of the Necedah National Wildlife Refuge:

Fourth Principal Meridian

T. 18 N., R. 2 E.,
Secs. 1 and 12.
T. 18 N., R. 3 E.,
Secs. 6, 7, 8, 9, 15, and 16 (Those parts lying south and west of Grand Dike Road); sec. 17.

The area described contains 4,107 acres in Juneau County.

The legal description above has been corrected to include only those parts of sec. 16 in T. 18 N., R. 3 E., lying south and west of Grand Dike Road. There is no change in the total acres.

The purpose of the proposed extension is to continue the withdrawal created by PLO No. 6619 for an additional 20-year term to allow the U.S. Fish and Wildlife Service to continue to manage the land as part of the Necedah National Wildlife Refuge.

There are no suitable alternative sites since the lands described herein contain the natural resources and improvements of interest for protection.

No water rights will be needed to fulfill the purpose of the requested withdrawal. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director of the BLM-Eastern States.

Comments, including names and street addresses of respondents, will be available for public review at the BLM-Eastern States, Milwaukee Field Office, 626 E. Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202 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 to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. 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.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the State Director, BLM-Eastern States within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

This withdrawal extension proposal will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

(Authority: 43 CFR 2310.3–1)

Dated: October 19, 2005.

Ann B. Aldrich,

Acting State Director, Eastern States.

[FR Doc. 05–21394 Filed 10–25–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, 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 American Museum of Natural History, New York, NY. The human remains and associated funerary objects were removed from Yakima and Kittitas Counties, WA.

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 American Museum of Natural History professional staff in consultation with representatives of the Confederated Tribes of the Chehalis Reservation, Washington; Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Warm Springs Reservation of Oregon; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Jamestown S'Klallam Tribe of Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Nooksack Indian Tribe of Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Samish Indian Tribe, Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of Washington.

In 1903, human remains representing a minimum of five individuals were collected from a site on the north side of River Road, east of the North and South Branch Road, in the vicinity of Tampico, Yakima County, WA, by Harlan I. Smith. No known individuals were identified. The 31 associated funerary objects are 1 bone point, 25 dentalium shells (10 of them engraved), 4 pieces of charcoal, and 1 bone.

These individuals have been identified as Native American based on geographic and archeological evidence. The human remains were recovered from a volcanic ash knoll. The lack of postcontact artifacts, the presence of incised dentalium shells, and the form of interment in a river valley location suggest a late precontact date for the remains.

In 1903, human remains representing a minimum of one individual were collected from a site in the vicinity of North Yakima, east of the mouth of the Naches River, north side of a hill, Yakima County, WA, by Harlan I. Smith. No known individual was identified. No associated funerary objects are present.

The individual has been identified as Native American based on geographic evidence and burial practice. The use of

a rockslide grave suggests a late precontact date for the remains.

In 1903, human remains representing a minimum of one individual were collected from the James McWhirter 20 Acre Farm, in the vicinity of North Yakima, Yakima County, WA, by Harlan I. Smith. The site is 12 miles up the Naches River along the north side, on the crest of a foothill terrace. No known individual was identified. The one associated funerary object is a shell disk.

The individual has been identified as Native American based on geographic evidence and burial practice. The lack of post-contact artifacts, the presence of a cut disk shell bead, and the river valley location of the bluff pebble grave suggest a late precontact date for the human remains.

In 1903, human remains representing a minimum of one individual were collected from a site at Priest Rapids, Kittitas County, WA, by Harlan I. Smith. The site is along the western bank of the Columbia River, 5 miles south of Mr. Craig's house. No known individual was identified. No associated funerary objects are present.

The individual has been identified as Native American based on geographic evidence and burial practice. The remains were found in a sand grave covered with flat river stones. The location of the grave in a river valley suggests a late precontact date for the remains.

In 1903, human remains representing a minimum of one individual were collected from a site at Priest Rapids, Kittitas County(?), WA, by Harlan I. Smith. The site is at the edge of the Columbia River, 12 miles north of Mr. Craig's house. No known individual was identified. The four associated funerary objects are one stone mortar and three pestles.

The individual has been identified as Native American based on geographic evidence and burial practice. The remains were found in a sand grave covered with river cobbles. The location of the grave in a river valley suggests a late precontact date for the remains.

In 1903, human remains representing a minimum of one individual were collected from a site 10 miles north of the head of Priest Rapids on the Columbia River, 8 miles above Mr. Craig's house, Kittitas County, WA, by Harlan I. Smith. No known individual was identified. No associated funerary objects are present.

The individual has been identified as Native American based on the talus slope inhumation, a form of burial consistent with the postcontact practices of Sahaptin speakers of the area. The presence of cedar slabs in the grave also suggests a postcontact date for these remains. The cedar slabs are not part of the museum's collection.

In 1903, human remains representing a minimum of two individuals were collected from the east side of an escarpment running south of the Columbia River, near the head of Priest Rapids, 2 miles southwest of Mr. Craig's house, Kittitas County, WA, by Harlan I. Smith. No known individuals were identified. The two associated funerary objects are one roll of birch bark and one piece of stitched rush matting.

The individuals have been identified as Native American based on the kinds of associated funerary objects and burial type. The remains were found interred in a talus slope, a form of burial consistent with the postcontact practices of Sahaptin speakers of the area. The presence of upright wood posts, bark, and matting in the grave also suggests a postcontact date for the remains. The wood posts are not part of the museum's collection.

In 1903, human remains representing a minimum of 10 individuals were collected from Mr. Bull's farm, 7 miles south of Ellensburg, Kittitas County, WA, by Harlan I. Smith. The site is east of Cherry Creek in the western extension of the Saddle Mountains. No known individuals were identified. The 1295 associated funerary objects are 5 pieces of leather, 109 shells, 28 glass beads, 3 iron bracelets, 1 perforated bone disk, 1 freshwater shell fragment, 1 reed mat fragment, 1 reed mat fragment with hide and copper and shell beads, 1 piece of animal fur, 3 pieces of matting, 1098 copper, glass, and shell beads strung on fiber and leather, 4 shell ornaments (including 1 nose ornament), 2 copper pendants, 4 metal bracelets, 5 rodent teeth, 1 copper disk pendant, 1 wood knot hole, 1 piece of iron, 1 fragment of fabric incorporating feathers and fur, 1 copper ornament, 1 brass pendant with copper head, 1 metal pendant with leather thong, 1 piece of shell, 13 iron cones, 2 iron pendants, 2 antler fragments, 1 triangular copper object, 2 shell pendants, and 1 unidentified shell object.

The individuals have been identified as Native American based on the kinds of associated funerary objects and type of burial. The presence of postcontact funerary objects and the use of talus slope for interment suggest a postcontact date for these remains.

In 1903, human remains representing a minimum of one individual were collected from a site on the south side of Yakima Ridge, Yakima County, WA, by Harlan I. Smith. The site is 1 mile east of the confluence of the Yakima and Naches Rivers. No known individual was identified. No associated funerary objects are present.

This individual has been identified as Native American based on geographic information and burial type. The remains were found in a talus slope, which suggests a postcontact age. The presence of rush matting in the grave also suggests a postcontact date for the remains. The rush matting is not part of the museum's collection.

In 1903, human remains representing a minimum of four individuals were collected from a site on the north side of the Naches River, 1/2 mile above the confluence of the Yakima and Naches Rivers, Yakima County, WA, by Harlan I. Smith. No known individuals were identified. The 91 associated funerary objects are 4 wooden pieces of a fire drill, 20 dog or wolf bones, 1 partial decorated bow, 3 basket fragments, 1 fragment of rush mat, approximately 50 copper tubes and beads, 4 bone tubes, 1 bone point, 1 perforated stone cylinder, 3 stone flakes, and 3 projectile points.

The individuals have been identified as Native American based on the type of associated funerary objects and the form of burial. The two graves were talus slope interments of a form used by the postcontact Shahaptin speakers who occupied the area. The associated funerary objects also suggest a postcontact date for the remains.

In 1903, human remains representing a minimum of two individuals were collected from a site in the vicinity of Selah, Yakima County, WA, by Harlan I. Smith. No known individuals were identified. No associated funerary objects are present.

The individuals have been identified as Native American based on the form of burial. The graves were talus slope interments of a form used by the postcontact Sahaptin speakers who occupied the area. The presence of wood in both graves, and leather and desiccated soft tissue in one grave may suggest a postcontact date for the remains. The wood and leather are not part of the museum's collection.

In 1903, human remains representing a minimum of one individual were collected from a site 2 miles northeast of the mouth of the Naches, south of the Yakima River in Yakima County, WA, by Harlan I. Smith. No known individual was identified. No associated funerary objects are present.

The individual has been identified as Native American based on the form of burial. The grave was a talus slope interment of a form used by the postcontact Sahaptin speakers who occupied the area. The presence of pieces of cedar in the grave suggests a postcontact date for the remains. The pieces of cedar are not part of the museum's collection.

The geographic location of all of the sites described above is consistent with the early postcontact territory of Sahaptin speakers who are ancestors of the Confederated Tribes and Bands of the Yakama Nation, Washington. The burial type described by Mr. Smith for all of the remains reported here is consistent with the late precontact and postcontact burial practices of the Confederated Tribes and Bands of the Yakama Nation, Washington. Experts in Oregon Plateau archeology suggest that there has been cultural continuity from late precontact to the postcontact period in this area.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 30 individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 1,424 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 American Museum of Natural History 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 Confederated Tribes and Bands of the Yakama Nation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5837, before November 25, 2005. Repatriation of the human remains and associated funerary objects to the Confederated Tribes and Bands of the Yakama Nation, Washington may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Confederated Tribes of the Chehalis Reservation, Washington; Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Warm Springs Reservation of Oregon; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Jamestown S'Klallam Tribe of Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Nooksack Indian Tribe of Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Samish Indian Tribe, Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of Washington that this notice has been published.

Dated: September 30, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–21330 Filed 10–25–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: U.S. Department of Agriculture, Forest Service, Gila National Forest, Silver City, NM, and Field Museum of Natural History, Chicago, IL

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 a cultural item in the control of the U.S. Department of Agriculture, Forest Service, Gila National Forest, Silver City, NM, and in the possession of the Field Museum of Natural History, Chicago, IL, that meets the definition of ''unassociated funerary object'' under 25 U.S.C. 3001. The cultural item was removed from the 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 cultural items. The National Park Service is not responsible for the determinations in this notice.

The cultural item is a small San Francisco Red pottery jar.

A detailed assessment of the cultural item was made by the U.S. Department of Agriculture, Forest Service, Gila National Forest and the Field Museum of Natural History professional staff in consultation with the Hopi Tribe, Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1954, the cultural item was removed from Valley View Pueblo in the Gila National Forest, Catron County, NM, during legally authorized excavations and collected by Dr. Paul S. Martin of the Field Museum of Natural History, Chicago, IL. In August 2005, the Field Museum of Natural History, Chicago, IL, found an unassociated funerary object among its collections that had been taken from Gila National Forest, Catron County, NM, by Dr. Martin. Unassociated funerary objects removed from Gila National Forest, Catron County, NM, were previously published in the **Federal Register** of June 1, 2005, FR Doc. 05–10805, page 31510, and in a subsequently corrected Notice of Intent to Repatriate published in the **Federal Register** on August 3, 2005, FR Doc. 05–15322, page 44687.

Material culture, architecture, and site organization indicate that Valley View Pueblo is an Upland Mogollon site occupied between A.D. 550 and 1150. The territory of the Upland Mogollon stretched from south-central Arizona to south-central New Mexico. The Upland Mogollon territories are claimed, currently inhabited, or used by the Hopi Tribe, Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico. Most archeological evidence linking Upland Mogollon to present-day Indian tribes relies on ceramics that suggest cultural connections between these groups. Present-day descendants of the Upland Mogollon are the Hopi Tribe, Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico. Oral traditions preserved in the ethnographic literature and presented by representatives of the Hopi Tribe,

Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico support cultural affiliation.

Officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the cultural item 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 and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest have also 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 object and the Hopi Tribe, 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 unassociated funerary object should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 333 Broadway Blvd., SE, Albuquerque, NM 87102, telephone (505) 842–3238, before November 25, 2005. Repatriation of the unassociated funerary object to the Hopi Tribe, 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, Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: September 12, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–21331 Filed 10–25–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Horner Collection, Oregon State University, Corvallis, OR

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 Horner Collection, Oregon State University, Corvallis, OR, 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 museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The five cultural items are one drum, one drumstick, one Coho or shinny stick, one trinket basket, and one wallet basket. Three of the cultural items are part of the Dr. J.L. Hill collection.

Horner Collection, Oregon State University professional staff consulted with representatives of the Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; Karuk Tribe of California; Quinault Tribe of the Quinault Reservation, Washington; and Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington.

The Museum of Oregon Country, Oregon Agricultural College acquired the collection from Dr. Hill's son and daughter in 1925. The Museum of Oregon Country was renamed the John B. Horner Museum of the Oregon Country in 1936, and became commonly known as the Horner Museum. The Oregon Agricultural College was renamed the Oregon State College in 1937, and became Oregon State University in 1962. In 1981, Dr. Hill's heirs, Emily Hill Ward and her son, Fred Ward signed a gift agreement transferring ownership of Dr. Hill's entire collection to the museum. The Horner Museum closed in 1995. Currently, cultural items from the Horner Museum are referred to as the Horner Collection, which is owned by, and in the possession of, Oregon State University.

At an unknown date, one drum and drumstick were removed from the Siletz Reservation, OR, by Mr. C.S. Davis. In 1921, Dr. J.L. Hill's heirs loaned the drum and drumstick to the Museum of Oregon Country. It is believed that Mr. Davis had given the cultural items to Dr. Hill specifically to donate to the Museum of Oregon Country. In the 1981 gift agreement, Dr. Hill's heirs transferred ownership of Dr. Hill's entire collection, including the drum and drumstick, to the Horner Collection, Oregon State University.

The museum records for the drum and drumstick state that they were originally made by Moses Lane of the Siletz Reservation, OR. A cultural representative of the Confederated Tribes of the Siletz Reservation, Oregon has said that the drum and drumstick would have been used to enhance the spiritual development of the owner. Traditionally, the drum and drumstick would have been uniquely and solely connected to the owner and would have been buried with the owner. Furthermore, according to museum records, a note attached to the drum reads, ''You will notice that the framework is hand made and cut out with crude tools. The cover is tanned horsehide. These drums are used at tribal ceremonies, dances, games etc. and are generally buried with the remains of the owner.''

The Horner Collection, Oregon State University has no evidence the drum and drumstick were ever buried with Moses Lane or any other individual. However, museum records state that Dr. Hill was known to have collected human remains and cultural items from burials and mounds. Based on consultation and museum records, the Horner Collection, Oregon State University finds that the intent was to maintain the spiritual connection between owner and object through the burial of the cultural items with their owner and has therefore identified the cultural items as unassociated funerary objects.

At an unknown date, one shinny or Coho stick was removed from an unknown location by Dr. Hill. In 1921, Dr. Hill's heirs loaned the cultural item to the museum. In the 1981 gift agreement, Dr. Hill's heirs, transferred ownership of Dr. Hill's entire collection, including the shinny or Coho stick, to the Horner Collection, Oregon State University.

According to museum records the shinny or Coho stick was created by Andrew Smith of the Siletz Reservation, OR. A cultural representative of the Confederated Tribes of the Siletz Reservation, Oregon has said that the shinny or Coho stick would have been used to enhance the spiritual development of the owner. Therefore, a shinny or Coho stick would have been uniquely and solely connected to the owner, and traditionally such items were buried with the owner. The Horner Collection, Oregon State University has no evidence that the shinny or Coho stick was ever buried with Andrew Smith or any other individual. However,

museum records state that Dr. Hill was known to have collected human remains and cultural items from burials and mounds. Based on consultation and museum records, the Horner Collection, Oregon State University finds that the intent was to maintain the spiritual connection between owner and object through the burial of this cultural item with its owner and has therefore identified the cultural item as an unassociated funerary object.

At an unknown date, one trinket basket and one wallet basket were removed from an unknown location by Mr. W.C. Dyer. In 1934, Mrs. S.C. Dyer, the wife of Mr. Dyer, donated the trinket basket and wallet basket to the museum. The Horner Collection, Oregon State University has no evidence the trinket and wallet baskts were ever buried with any individual. However, museum records state that Mr. Dyer was known to have collected human remains and cultural items from burials and mounds. Based on consultation and museum records, the Horner Collection, Oregon State University has identified the cultural items as unassociated funerary objects.

According to museum records, both the trinket and wallet baskets are Clatsop in origin. Any direct Clatsop descendant who meets the Confederated Tribes of the Siletz Reservation, Oregon enrollment criteria is eligible for membership in the Confederated Tribes of the Siletz Reservation, Oregon. The Clatsop are ancestors of the present-day Chinook Tribe. The Chinook Tribe has cultural and political ties to the Confederated Tribes of the Siletz Reservation, Oregon. The Chinook Tribe is a confederated member of the Confederated Tribes of the Siletz Reservation, Oregon.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the five 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 specific burial sites of Native American individuals. Officials of the Horner Collection, Oregon State University 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 five unassociated funerary objects and the Confederated Tribes of the Siletz Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Sabah Randhawa, Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–8260, before November 25, 2005. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Siletz Reservation, Oregon may proceed after that date if no additional claimants come forward.

Horner Collection, Oregon State University is responsible for notifying the Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; Karuk Tribe of California; Quinault Tribe of the Quinault Reservation, Washington; and Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington that this notice has been published.

Dated:September 28, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–21329 Filed 10–25–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Horner Collection, Oregon State University, Corvallis, OR

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 the Horner Collection, Oregon State University, Corvallis, OR. The human remains were removed from Curry and Lincoln Counties, OR.

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 Horner Collection, Oregon State University professional staff in consultation with representatives of the Confederated Tribes of the Siletz Reservation, Oregon and the Coquille Tribe of Oregon.

The Museum of Oregon Country, Oregon Agricultural College was renamed the John B. Horner Museum of the Oregon Country in 1936, and became commonly known as the Horner Museum. The Oregon Agricultural College was renamed the Oregon State College in 1937, and became Oregon State University in 1962. The Horner Museum closed in 1995. Currently, cultural items from the Horner Museum are referred to as the Horner Collection, which is owned by, and in the possession of, Oregon State University.

At an unknown time, human remains representing a minimum of one individual were removed from an unknown site near Yachats in Lincoln County, OR. In 1968, the human remains were donated by Mrs. P. Mitchell to the John B. Horner Museum of the Oregon Country. Mrs. Mitchell told museum staff that the human remains were found near Yachats. It is unknown if the human remains were removed by Mrs. Mitchell. No known individual was identified. No associated funerary objects are present.

The human remains have been identified as Native American dating to precontact times based on typical tooth wear. Historical documents, ethnographic sources, and oral history indicate that many of the tribes that are members of the present-day Confederated Tribes of the Siletz Reservation, Oregon have occupied these areas since precontact times, including the Alsea/Siuslaw tribe. The Alsea/Siuslaw tribe represents the Alsea, Lower Umpqua, Siuslaw, Yachats, and Yaquina Native American groups. The Alsea/Siuslaw tribe was a signatory to the Oregon Coast Treaty of 1855. In 1857, the Alsea/Siuslaw were located on the Siuslaw River, Lane County, OR, and their traditional territory extended south to Heceta Head, Lane County, OR (Harris 1858). Yachats is near the border of Lane and Lincoln Counties, OR. The Alsea/Siuslaw tribe's traditional territopry includes both counties. The Alsea/Siuslaw tribe is one of the member tribes of the Confederated Tribes of the Siletz Reservation, Oregon and by 1875, the Alsea/Siuslaw tribe was residing on the Siletz Reservation. Therefore, the Confederated Tribes of the Siletz Reservation, Oregon have a connection to the area nearYachats that includes both Lane and Lincoln Counties, OR. The Alsea/Siuslaw tribe is a distinct and separate tribe, and distinguished from the Alcea band of Tillamooks, which brought a land claim to the Indian Claims Commission in 1955.

At an unknown date, human remains representing a minimum of 16

individuals were removed from an unknown site near Pistol River, Curry County, OR. In 1970, Mrs. Dorothy Timeus donated the human remains to the museum. According to Mrs. Timeus, the human remains are Native American and were found in the sand dunes near the Pistol River. It is unknown if the human remains were removed by Mrs. Timeus. No known individuals were identified. No associated funerary objects are present.

A letter written by Mr. Harmon Timeus, Mrs. Timeus' son, states, ''I have checked with several authorities concerning the Indian skulls and relics...they are all from the To-To-Tin tribe. There were many smaller groups of this tribe. The Chetl-essen-tans is the specific group which inhabited the land where the relics were found.'' The authorities cited in the letter are unknown. The tribe mentioned in the letter is most likely the Chet-less-ing-ton Band of Too-too-to-ney tribe, who were located at the eddy of Pistol River in the 1800s. The Chet-less-ing-ton were signatories to the Oregon Coast Treaty of 1855 and by 1857 the Chet-less-ing-ton were residing on the reservation of the Confederated Tribes of the Siletz Reservation, Oregon (Harris, 1858). The Chet-less-ing-ton are a subgroup of the Athabaskan/Tututni, which is one of the member tribes of the Confederated Tribes of the Siletz Reservation, Oregon.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 17 individuals of Native American ancestry. Officials of the Horner Collection, Oregon State Unversity 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 Confederated Tribes of the Siletz Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Sabah Randhawa Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–8260, before November 25, 2005. Repatriation of the human remains to the Confederated Tribes of the Siletz Reservation, Oregon may proceed after that date if no additional claimants come forward.

Horner Collection, Oregon State University is responsible for notifying the Confederated Tribes of the Siletz Reservation, Oregon and Coquille Tribe of Oregon that this notice has been published.

Dated: September 28, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–21332 Filed 10–25–05; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–6]

Circular Welded Non-Alloy Steel Pipe From China

Determination

On the basis of information developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 421(b)(1) of the Trade Act of 1974,[1] that circular welded non-alloy steel pipe[2] from the People's Republic of China is being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.[3] (70 FR 58746, October 7, 2005).

Recommendations on Proposed Remedies

Chairman Stephen Koplan and Commissioner Charlotte R. Lane propose that the President impose an annual quota of 160,000 short tons on imports of circular welded non-alloy steel pipe from China for a three-year period. They further recommend that, if applications are filed, the President direct the U.S. Department of Commerce and the U.S. Department of Labor to provide expedited consideration of trade adjustment assistance for firms and/or workers affected by the subject imports.

Commissioner Jennifer A. Hillman and Commissioner Shara L. Aranoff propose that the President impose a tariff-rate quota for a period of three years on imports of circular welded non-alloy steel pipe from China as follows: 267,468 short tons in the first year of relief, 280,841 short tons in the second year, and 308,925 short tons in the third year, with subject pipe entered within the quota subject to the current rate of duty of ''Free,'' and over-quota imports subject to a duty of 25 percent ad valorem. They further recommend that, if applications are filed, the President direct the U.S. Department of Commerce and the U.S. Department of Labor to provide expedited consideration of any petitions for trade adjustment assistance filed by firms or workers affected by the subject imports.

Background

Following receipt of a petition, on August 2, 2005, on behalf of Allied Tube and Conduit Corp., Harvey, IL; IPSCO Tubulars, Inc., Camanche, IA; Maruichi American Corp., Santa Fe Springs, CA; Maverick Tube Corp., Chesterfield, MO;

[1] 19 U.S.C. 2451(b)(1).

[2] The products subject to this investigation include certain welded carbon quality steel pipes and tubes, of circular cross-section, with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (ASTM, proprietary, or other), generally known as standard pipe and structural pipe (they may also be referred to as structural or mechanical tubing). The term carbon quality steel may include certain low alloy steel imported as other alloy steel pipes and tubes.

All pipe meeting the physical description set forth above that is used in, or intended for use in, standard and structural pipe applications is covered by the scope of this investigation. Standard pipe applications include the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and as an intermediate product for protection of electrical wiring, such as conduit shells. Structural pipe is used in construction applications.

Products not included in this investigation are mechanical tubing (whether or not cold-drawn) provided for in HTS subheading 7306.30.50, tube and pipe hollows for redrawing provided for in HTS 7306.30.5035, or finished electrical conduit provided for in HTS 7306.30.5028. API line pipe used in oil or gas applications requiring API certifications is also not included in this investigation. Similarly, pipe produced to the API specifications for oil country tubular goods use are not included in this investigation.

The subject imported products are currently provided for in the Harmonized Tariff Schedule of the United States (HTS) subheadings 7306.30.10 and 7306.30.50. Specifically, the various HTS statistical reporting numbers under which the subject standard pipe has been provided for since January 1, 1992, are as follows: 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTS category is provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Pipe multiple-stenciled to the ASTM A–53 specification and to any other specification, such as the API–fL or 5L X–42 specifications, or single-certified pipe that enters under HTS subheading 7306.10.10, is covered by this investigation when used in, or intended for use in, one of the standard pipe applications listed above, regardless of the HTS category in which it is entered. Pipe shells that enter the United States under HTS subheading 7306.30.50, including HTS statistical reporting number 7306.30.5028, are also covered by this investigation. The investigation also covers pipe used for the production of scaffolding (but does not include finished scaffolding).

[3] Vice Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson make a negative determination.

Sharon Tube Co., Sharon, PA; Western Tube Conduit Corp., Long Beach, CA; Wheatland Tube Co., Wheatland, PA.; and the United Steelworkers of America, AFL–CIO, Pittsburgh, PA; the Commission instituted investigation No. TA–421–06, Circular Welded Non-Alloy Steel Pipe from China, under section 421(b) of the Act to determine whether circular welded non-alloy steel pipe from China is being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

Notice of the institution of the Commission's investigation and of the scheduling of a public hearing to be held in connection therewith was given by posting a copy of the notice on the Commission's Web site (*www.usitc.gov*) and by publishing the notice in the **Federal Register** of August 10, 2005 (70 FR 46543). The hearing was held on September 16, 2005 in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The views of the Commission are contained in USITC Publication 3807 (October 2005), entitled *Circular Welded Non-alloy Steel Pipe from China: Investigation No. TA–421–6*.

Issued: October 21, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–21395 Filed 10–25–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–551]

In the Matter of Certain Laser Bar Code Scanners and Scan Engines, Components Thereof and Products Containing Same; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 23, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Symbol Technologies, Inc. of Holtsville, New York. An amended complaint was filed on October 14, 2005. The complaint, as amended, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laser bar code scanners and scan engines, components thereof and products containing same by reason of infringement of claim 48 of U.S. Patent No. 5,262,627, claims 7, 13, 14, 17, and 18 of U.S. Patent No. 5,545,889, claims 17 and 18 of U.S. Patent No. 5,917,173, claims 2 and 21 of U.S. Patent No. 5,457,308, and claims 1, 2, and 4–6 of U.S. Patent No. 6,220,514. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 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 at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Kevin Baer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2221.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on October 19, 2005, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain laser bar code scanners or scan engines, components thereof or products containing same by reason of infringement of one or more of claim 48 of U.S. Patent No. 5,262,627, claims 7, 13, 14, 17, and 18 of U.S. Patent No. 5,545,889, claims 17 and 18 of U.S. Patent No. 5,917,173, claims 2 and 21 of U.S. Patent No. 5,457,308, and claims 1, 2, and 4–6 of U.S. Patent No. 6,220,514, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Symbol Technologies, Inc., One Symbol Plaza, Holtsville, New York 11742–1300.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Metro (Suzhou) Technologies Co., Ltd., 221 Xing Hai Street, Suzhou Industrial Park, Suzhou, China. Metrologic Instruments, Inc., 90 Coles Road, Blackwood, New Jersey 08012.

(c) Kevin Baer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited

exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 20, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–21317 Filed 10–25–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 12, 2005, a proposed consent decree in *United States* v. *ARCO Terminal Services Corp.*, Case No. 05–07358, was lodged with the United States District Court for the Central District of California.

In this action, the United States sought injunctive relief and civil penalties under Section 113 of the Clean Air Act (''CAA''), against ARCO Terminal Services Corp. (''ATSC'') for failure to use the required control equipment to control emissions that resulted in 294 separate loading events that were subject to the control requirements of Rule 1142 at its marine loading facility in Long Beach, California. The Consent Decree requires ATSC to employ its existing control technology on all loading events subject to the requirements of Rule 1142 and to pay a civil penalty of $225,000.

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 *United States* v. *ARCO Terminal Services Corp.*, D.J. Ref. #90–5–2–1–06988.

The proposed Consent Decree may be examined during the public comment period on the following United States 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, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, or by faxing or E-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check, payable to the U.S. Treasury, in the amount of $12.25 ($.25 per page reproduction cost.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–21363 Filed 10–25–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Clean Water Act

Notice is hereby given that on October 6, 2005, a proposed Consent Decree in *United States and Department of Health, State of Hawaii* v. *Hawaii Department of Transportation,* Civil Action No. 05–00636 was lodged with the United States District Court for the District of Hawaii.

The United States and the Department of Health, State of Hawaii (''DOH''), brings this action against the State of Hawaii Department of Transportation (''HDOT''), pursuant to Sections 309(b) and (d), of the Clean Water Act (''CWA'' or ''the Act''), 33 U.S.C. 1319(b) and (d) and Sections 342D–50(a) of the Hawaii Revised Statutes (2004). The Consent Decree provides for extensive injunctive relief, civil penalties, and two supplemental environmental projects (''SEP''s). Pursuant to the terms of the first project, HDOT will create an Environmental Management System (''EMS'') for the operations at HDOT's airports, harbors, and highways that incorporate Best Management Practices and Pollution Prevention at each of its facilities.

Under the terms of the second project, HDOT will develop and conduct ''Compliance Assistance Workshops'' for construction contractors and will sponsor them at six locations on four of the islands, Hawaii, Kauai, Maui and Oahu.

Pursuant to 28 C.F.R. 50.7, the United States 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 U.S. Department of Justice, Assistance Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States and Department of Health, State of Hawaii* v. *Hawaii Department of Transportation,* Civil Action No. 05–00636, D.J. Ref. No. 90–5–1–1–07488.

The Consent Decree may be examined during the public comment period on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, or by faxing or E-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $25.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources.

[FR Doc. 05–21362 Filed 10–25–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States of America and Fremont Lumber Company, Kerr-McGee Company and Western Nuclear, Inc., Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given that on October 14, 2005, a proposed Consent Decree (''Consent Decree''), in the case of *United States* v. *Kerr-McGee Corp., et al.,* Civil Action No. 04–CV–00032 (D. OR.), has been lodged with the United States District Court for the District of Oregon.

The Complaint sought performance of work and the recovery of costs incurred in connection with the response action taken at the White King/Lucky Lass Superfund Site (''Site'') in Lakeview County, Oregon. Under the terms of this Consent Decree Defendants agree to: (1) Implement the remaining remedial action at the Site; (2) pay approximately $3 million in past costs incurred by EPA and the United States Department of Agriculture, Forest Service; (3) pay a civil penalty of $ 50,000; (4) perform a Supplemental Environmental Project for their failure to timely comply with an existing Unilateral Administrative Order (''UAO''); (5) grant a covenant not to sue for all claims against the United States; and (6) dismiss a citizen suite under CERCLA Section 310. In addition, as part of this settlement the United States agress to pay Defendants $2,000,000 to resolve the contribution claims that have been asserted against U.S. Forest Service and other federal agencies. In exchange, the United States will provide

a covenant not to sue and contribution protection to all of the Defendants.

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 *United States* v. *Kerr-McGee Corp., et al.,* Civil Action No. 04–CV–00032 (D. OR.), D.J. Ref. 90–11–2–923; 90–11–2–923/1; 90–11–6–06011; 90–11–6–06011/1.

The Consent Decree may be examined at the Office of the United States Attorney, District of Oregon, 1000 SW. Third Avenue, Suite 600 Portland, Ore. and at U.S. EPA Region 10, 1200 6th Ave, Seattle, WA. During the public comment period, the Consent Decree may 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 from the Consent Decree Library, please enclose a check in the amount of $13.50 (25 cents per page reproduction cost, without attachments) payable to the United States Treasury for payment.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–21361 Filed 10–25–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 20, 2005.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), 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: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title: Point of Purchase Survey.

OMB Number: 1220–0044.

Type of Response: Reporting.

Frequency: Quarterly.

Affected Public: Individuals or households.

Estimated Number of Respondents: 22,627.

Annual Responses: 59,964.

Total Annual Burden Hours: 11,993.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The purpose of this collection is to develop and maintain a timely list of retail, wholesale, and service establishments at which people shop for specific consumer items. The information collected is used to select establishments for pricing market based items as needed for the Consumer Price Index.

Agency: Bureau of Labor Statistics.

Type of Review: Extension of a currently approved collection.

Title: Mass Layoff Statistics Program.

OMB Number: 1220–0090.

Type of Response: Reporting.

Frequency: Quarterly and Monthly.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Estimated Number of Respondents: 17,052.

Annual Responses: 17,832.

Total Annual Burden Hours: 72,587.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Clause (iii) of section 309(2)(15)(a)(1)(A) of the Workforce Investment Act states that the Secretary of Labor shall oversee the development, maintenance, and continuous improvement of the incidence of, industrial and geographical location of, and number of workers displaced by, permanent layoffs and plant closings.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–21359 Filed 10–25–05; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 20, 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: Extension of currently approved collection.

Title: Labor Certification for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States: Administrative Measures to Improve Program Performance.

OMB Number: 1205–0404.

Frequency: On occasion.

Affected Public: Businesses or other for-profits, Farms.

Type of Response: Reporting.

Number of Respondents: 335.

Annual Responses: 335.

Average Response time: 15 minutes.

Total Annual Burden Hours: 84.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: 20 CFR 655.106(e) required employers of nonimmigrant foreign (H–2A) workers in agriculture in the United States to notify their State Workforce Agency if such an employee departs prior to or remains after a scheduled departure date.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–21360 Filed 10–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Preparation and Maintenance of Accurate and Up-to-date Certified Mine Maps for Surface and Underground Coal Mines; Submittal of Underground Mine Closure Maps; and Notification of MSHA Prior To Opening New Mines or the Reopening of Inactive or Abandoned Mines

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before December 27, 2005.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Rowlett.John@dol.gov*, along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Title 30 CFR 75.1200, 75.1200–1, 75.1201, 75.1202, 75.1202–1, and 75.1203 require underground coal mine operators to have in a fireproof repository in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazards, an accurate and up-to-date map of such mine drawn on scale. These standards specify the information which must be shown, the range of acceptable scale, the surveying technique or equivalent accuracy required of the surveying which must be used to prepare the map, that the maps must be certified as accurate by a registered engineer or surveyor, that the maps must be kept continuously up-to-date by temporary notations and must be revised and supplemented to include the temporary notations at intervals not more than 6 months. In addition, the mine operator must provide the MSHA District Manager a copy of the certified mine map annually during the operating life of the mine. These maps are essential to the planning and safe operation of the mine. In addition, these maps provide a graphic presentation of the locations of working sections and the locations of fixed surface and underground mine facilities and equipment, escapeway routes, coal haulage and man and materials haulage entries and other information essential to mine rescue or mine fire fighting activities in the event of mine fire, explosion or inundations of gas or water. The information is essential to the safe operation of adjacent mines and mines approaching the worked out areas of active or abandoned mines. Section 75.372 requires underground mine operators to submit three copies of an up-to-date mine map to the District Manager at intervals not exceeding 12 months.

Title 30 CFR 75.1204 and 75.1204–1 require that whenever an underground coal mine operator permanently closes or abandons a coal mine, or temporarily closes a coal mine for a period of 90 days, the operator shall file with MSHA a copy of the mine map revised and supplemented to the date of closure. Maps are retained in a repository and are made available to mine operators of adjacent properties. The maps are necessary to provide an accurate record of underground areas that have been mined to help prevent active mine operators from mining into abandoned areas that may contain water or harmful gases.

Title 30 CFR 77.1200, 77.1201 and 77.1202 require surface coal mine operators to maintain an accurate and up-to-date map of the mine and specified the information to be shown on the map, the acceptable range of map scales, that the map be certified a registered engineer or surveyor, that the map be available for inspection by the Secretary or his authorized representative. These maps are essential for the safe operation of the mine and provide essential information to operators of adjacent surface and underground mine operators. Properly prepared effectively utilized surface mine maps can prevent outbursts of water impounded in underground mine workings and/or inundations of underground mines by surface impounded water or water and/or gases impounded in surface auger mining worked out areas.

Title 30 75.373 and 75.1721 require that after a mine is abandoned or declared inactive and before it is reopened, mine operations shall not begin until MSHA has been notified and has completed an inspection. Standard 75.1721 specifies that the notification be in writing and lists specific information, preliminary arrangements and mine plans which must be submitted to the MSHA District Manager.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Record of Mine Closure addressed in 30 CFR 75.1204 and 75.1204–1; the inclusion of standards requiring MSHA notification and inspection prior to mining when opening a new mine or reopening an inactive or abandoned mine addressed in 30 CFR 75.373 and 75.1721; and, the inclusion of standards requiring underground and surface mine operators to prepare and maintain accurate and up-to-date mine maps addressed in 30 CFR 75.1200, 75.1200–1, 75.1201, 75.1202, 75.1202–1, 75.1203, 75,372, 77.1200, 77.1201 and 77.1202. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESES** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''**Federal Register** Documents.''

III. Current Actions

Mine operators are required to conduct surveying such that mine maps are maintained accurate and up-to-date, the maps must be revised every 6 months and certified accurate by a registered engineer or surveyor and to submit copies of the certified underground maps to MSHA annually and an up-to-date and revised mine closure map whenever an operator permanently closes or abandons a coal mine, or temporarily closes a coal mine for a period of more than 90 days, he or she shall promptly notify the Secretary of such closure.

In addition, mine operators must notify MSHA so that an inspection can be conducted whenever a new mine is opened or a previously abandoned or inactive mine is reopened. The information required to be gathered and recorded on mine maps is essential to the safe operation of the mine and essential to the effectiveness of mandatory inspections and mandated mine plan approval by MSHA. Such information cannot be replaced by any other source and anything less than continuously updated and accurate information would place miner's safety at risk.

The information collected through the submittal of mine closure maps is used by operators of adjacent coal mines when approaching abandoned underground mines. The abandoned mine could be flooded with water or contain explosive amounts of methane or harmful gases. If the operator were to mine into such an area, unaware of the hazards, miners could be killed or seriously injured. In addition, it is in the public interest to maintain permanent records of the locations, extent of workings and potential hazards associated with abandoned mines. The public safety can be adversely affected by future land usage where such hazards are not known or inaccurately assessed. MSHA collects the closure maps and provides those documents to the Office of Surface Mining, Reclamation & Enforcement for inclusion in a repository of abandoned mine maps. Therefore, MSHA is continuing the certification and application of 30 CFR 75.1204 to assure the required information remains available for the protection of miner's and public safety. In addition, MSHA has added the burden hours and cost estimates for standards which address the preparation and maintenance of certified mine maps for surface and underground coal mines and the notification of MSHA prior to the opening of new coal mines or the reopening of inactive or abandoned mines.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Preparation and Maintenance of Accurate and Up-to-date Certified Mine Maps for Surface and Underground Coal Mines; Submittal of Underground Mine Closure Maps; and Notification of MSHA Prior to Opening New Mines or the Reopening of Inactive or Abandoned Mines.

OMB Number: 1219–0073.

Recordkeeping: Annual or on occasion.

Affected Public: Business or other for-profit.

Number of Responses: 1,586.

Number of Respondents: 1,586.

Total Burden Hours: 15,936.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $18,292,611.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 18th day of October, 2005.

David L. Meyer,

Director of Administration and Management.

[FR Doc. 05–21358 Filed 10–25–05; 8:45 am]

BILLING CODE 4510–43–P

MERIT SYSTEMS PROTECTION BOARD

[MSPB Docket No. DA–1221–05–0320–W–1]

Opportunity To File Amicus Briefs in William A. Wilcox v. International Boundary and Water Commission

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board is providing interested parties with an opportunity to submit amicus briefs on whether the Board has jurisdiction to review an individual right of action (IRA) appeal from an employee, former employee, or applicant for employment of the International Boundary and Water Commission.

SUMMARY:

Background

The appellant in *Wilcox* v. *International Boundary and Water Commission,* MSPB Docket No. DA–1221–05–0320–W–1, filed an IRA appeal alleging that the agency retaliated against him for protected disclosures he made while employed as Legal Advisor/General Counsel, GG–15, with the agency. The administrative judge dismissed the appeal for lack of jurisdiction. She found that the U.S. Section of the agency is a subdivision of an international organization and that its hiring authority derives from a 1944 Treaty, not from the provisions of U.S.C. Title 5. She found that the right to bring an IRA appeal derives from 5 U.S.C. 1221(a). She thus concluded that the appellant was not an employee entitled

to file an IRA appeal. The appellant has filed a petition for review arguing that the Board has jurisdiction over his appeal. The agency has filed a response opposing the petition.

Question To Be Resolved

This appeal raises the question of whether the Board has appellate jurisdiction to review an IRA appeal from an employee, former employee, or applicant for employment of the International Boundary and Water Commission.

Issues To Be Considered in Resolving the Question Posed

Title 5 of the United States Code, section 1221(a) provides that an employee, former employee, or applicant for employment may, with respect to any personnel action taken, or proposed to be taken * * * as a result of a prohibited personnel practice described in section 2302(b)(8), seek corrective action from the Merit Systems Protection Board. Section 2302(a)(2)(A) defines ''personnel action'' as various types of employment-related actions ''with respect to an employee in, or applicant for, a covered position in an agency.'' Section 2302(2)(C) in turn defines an ''agency'' to mean, inter alia, ''an Executive agency.'' For purposes of title 5, ''Executive agency'' means an Executive department, a Government corporation, and an independent establishment. 5 U.S.C. 105. An ''independent establishment'' means, inter alia, an establishment in the executive branch ''which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment.'' 5 U.S.C. 104.

The appellant in this case argues that the U.S. Section of the International Boundary and Water Commission is ''entirely a creature of the United States,'' operates as a separate federal agency, is an ''independent establishment'' within the meaning of 5 U.S.C. 104, and is not subject to international control. In contrast, the administrative judge found that the International Boundary and Water Commission is a subdivision of an ''international organization'' under 22 U.S.C. 277, 288.

Finally, we note that the U.S. Court of Appeals for the Federal Circuit and the Merit Systems Protection Board have not questioned IRA jurisdiction over the International Boundary and Water Commission in previous decisions. See, *e.g., Mestan* v. *International Boundary and Water Commission,* 95 Fed. Appx. 1012 (Fed. Cir. 2004) (non-precedential); *White* v. *International Boundary and Water Commission,* 59 M.S.P.R. 62 (1993).

DATES: All briefs in response to this notice shall be filed with the Clerk of the Board on or before November 25, 2005.

ADDRESSES: All briefs shall include the case name and docket number noted above (*Wilcox* v. *International Boundary and Water Commission*) and be entitled ''Amicus Brief.'' Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419. Respondents are encouraged to file by facsimile transmittal at (202) 653–7130.

FOR FURTHER INFORMATION CONTACT: Matthew Shannon, Deputy Clerk of the Board, or Melissa Jurgens, Counsel to the Clerk, at (202) 653–7200.

Dated: October 20, 2005.

Bentley M. Roberts, Jr.,

Clerk of the Board.

[FR Doc. 05–21388 Filed 10–25–05; 8:45 am]

BILLING CODE 7400–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–62 and 50–396]

Notice of License Terminations for University of Virginia Research Reactor (UVAR) and University of Virginia Cooperatively Assembled Virginia Low Intensity Educational Reactor (CAVALIER)

The U.S. Nuclear Regulatory Commission (NRC) is noticing the termination of Facility Operating License No. R–66 for the UVAR and Facility Operating License No. R–123 for the CAVALIER.

The NRC has terminated the license of the decommissioned UVAR, in the reactor facility on the UVA campus in Charlottesville, Virginia, and has released the site for unrestricted use. The licensee requested termination of the license in a letter to NRC dated June 18, 2004. The UVAR was a 2-MW-thermal, light-water-moderated, -cooled, and -reflected reactor fueled with plate-type fuel. It was licensed and first operated in June 1960. The reactor was permanently shut down on June 30, 1998. The licensee submitted a decommissioning plan to NRC for review and approval in a letter dated February 9, 2000, updated by letter dated April 26, 2000, and supplemented by letters on December 19, 2000, and May 4 and May 11, 2001. The NRC approved the UVAR decommissioning plan by Amendment No. 26 to the Facility Operating License No. R–66 on March 26, 2002.

The NRC has also terminated the license of the decommissioned CAVALIER, which was in the same reactor facility on the UVA campus in Charlottesville, Virginia, and has released the site for unrestricted use. The licensee requested termination of the license in an April 4, 2003 letter to NRC. The request for termination was affirmed by letter dated September 26, 2005. The CAVALIER was a 100-MW-thermal, light-water-moderated, -cooled, and -reflected reactor fueled with plate-type fuel. It was licensed and first operated in October 1974. The licensee submitted a decommissioning plan by letter February 26, 1990, and supplemented the plan on June 17, 1991. The NRC Commission issued an Order Authorizing Dismantling of Facility and Disposition of Component Parts for the CAVALIER, Facility Operating License No. R–123, on February 3, 1992.

A Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action To Decommission the University of Virginia, University of Virginia Research Reactor appeared in the **Federal Register** on December 6, 2001 (65 FR 17684). All comments received were considered by the staff during the review of the UVAR decommissioning plan for Facility Operating License No. R–66.

A Notice of Proposed Issuance of Orders Disposition of Component Parts and Terminating Facility License appeared in the **Federal Register** on April 22, 1991 (56 FR 16350). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action concerning Facility Operating License No. R–123.

The NRC completed its review of the April 2004 UVAR Final Status Survey Report submitted to NRC by letter dated June 18, 2004, and the March 2003 Evaluation of Radiological Characterization Results Relative to the Termination of NRC License No. R–123 dated, March 2003, submitted by letter dated April 4, 2003. Both reports documented the level of residual radioactivity remaining at the facility and stated that compliance with the criteria in the NRC-approved decommissioning plan for both reactors has been demonstrated.

Pursuant to 10 CFR 50.82(b)(6), the NRC staff has concluded that both reactors have been decommissioned in accordance with the approved decommissioning plans and that the terminal radiation surveys and

associated documentation demonstrate that the facilities and sites may be released in accordance with the criteria in the NRC-approved decommissioning plans. Further, on the basis of the decommissioning activities carried out by UVA, the NRC's review of the licensee's final status survey report, the results of NRC inspections conducted at the UVAR and CAVALIER, and the results of NRC confirmatory surveys, the NRC has concluded that the decommissioning process is complete and the facilities and sites may be released for unrestricted use. Therefore Facility Operating License Nos. R–66 and R–123 are terminated.

For further details concerning UVAR see the licensee's application for decommissioning dated February 9, 2000, updated by letter April 26, 2000 and supplemented by letters on December 19, 2000, May 4, and May 11, 2001; the NRC approval of the UVAR decommissioning plan by Amendment No. 26 to Facility Operating License No. R–66 on March 26, 2002; the licensee's request for license termination by letter to NRC dated June 18, 2004; the April 2004 UVAR Final Status Survey Report submitted to NRC by letter dated June 18, 2004; and NRC Inspection Report No. 50–62/2002–202, dated September 2, 2005. For further details about CAVALIER, see the licensee's February 26, 1990 application for decommissioning, supplemented on June 17, 1991; the February 3, 1992, Order Authorizing Dismantling of Facility and Disposition of Component Parts for the CAVALIER, Facility Operating License No. R–123; licensee's April 4, 2003, request for termination of the license; the March 2003 Evaluation of Radiological Characterization Results Relative to the Termination of NRC License No. R–123, submitted by letter dated April 4, 2003; and NRC Inspection Report No. 50–62/2002–202, dated September 2, 2005. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR) at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records for UVA dated after January 30, 2000, will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who have problems in accessing the documents in ADAMS should call the NRC PDR reference staff at 1–800–397–4209 or 301–415–4737 or e-mail *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 17th day of October, 2005.

For the Nuclear Regulatory Commission.

Brian E. Thomas,

Section Chief, Research and Test Reactors Section, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5–5949 Filed 10–25–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Final Regulatory Guide: Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued a revision to an existing guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 3.71, entitled ''Nuclear Criticality Safety Standards for Fuels and Material Facilities,'' describes methods that the NRC staff finds acceptable for complying with the NRC's regulations in Title 10, Parts 70 and 76, of the *Code of Federal Regulations*. In 10 CFR Part 70, ''Domestic Licensing of Special Nuclear Material,'' Section 70.20, ''General License To Own Special Nuclear Material,'' states that a specific license is required to acquire, deliver, receive, possess, use, transfer, import, or export special nuclear material. According to 10 CFR 70.22, ''Contents of Applications,'' each application for such a license must contain proposed procedures to avoid nuclear criticality accidents. In 10 CFR Part 76, ''Certification of Gaseous Diffusion Plants,'' Section 76.87, ''Technical Safety Requirements,'' states that the technical safety requirements should reference procedures and equipment that are applicable to criticality prevention.

The NRC initially issued Regulatory Guide 3.71 in 1998 to provide guidance concerning procedures that the staff considered acceptable for complying with these portions of the NRC's regulations. Toward that end, the original guide endorsed specific nuclear criticality safety standards developed by the American Nuclear Society's Standards Subcommittee 8 (ANS–8), ''Operations with Fissionable Materials Outside Reactors.'' Those national standards provide guidance, criteria, and best practices for use in preventing and mitigating criticality accidents during operations that involve handling, processing, storing, and/or transporting special nuclear material at fuel and material facilities. The original guide also took exceptions to certain portions of individual ANS–8 standards. In addition, the original guide consolidated and replaced a number of earlier NRC regulatory guides, thereby providing all of the relevant guidance in a single document.

Since that time, several ANS–8 nuclear criticality safety standards have been added, reaffirmed, revised, or withdrawn. Consequently, the NRC staff decided to update this guide to clarify which standards the agency endorses and to clearly state exceptions to individual standards. Toward that end, the staff issued this revised regulatory guide as Draft Regulatory Guide DG–3023, with a **Federal Register** notice (70 FR 25128), dated May 12, 2005, to solicit stakeholder comments. The public comment period closed on June 20, 2005, without the submission of any stakeholder comments; however, the NRC staff further revised RG 3.71 based on review of additional changes to the consensus standards in the guide.

This revision does not change any of the guidance provided in the initial issuance of Regulatory Guide 3.71; rather, it provides guidance concerning changes that have occurred since the NRC published the original guide in 1998. For completeness, this guide restates the endorsements and exceptions stated in Regulatory Guide 3.71, as applicable, while identifying endorsements of or exceptions to new or modified standards.

Since the ANSI/ANS–8 standards are constantly being issued, revised, reaffirmed, or withdrawn, the NRC staff plans to revise this guide on a regular basis. The NRC staff encourages and welcomes comments and suggestions in connection with improvements to published regulatory guides, as well as items for inclusion in regulatory guides that are currently being developed. Comments may be accompanied by relevant information or supporting data. Please mention the guide number in the subject line of your submission. Comments submitted in writing or in electronic form will be made available to the public in their entirety on the NRC's Agencywide Documents Access and Management System (ADAMS). Personal information will not be removed from your comments. You may

submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about RG 3.71 may be directed to H.D. Felsher, at (301) 415–5521 or via e-mail to *HDF@nrc.gov*.

Electronic copies of RG 3.71 are available through the NRC's public Web site under the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession No. ML051940351.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by email to *PDR@nrc.gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 17th day of October, 2005.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Regulatory Research.

[FR Doc. E5–5948 Filed 10–25–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of NUREG–1833, ''Technical Bases for Revision to the License Renewal Guidance Documents''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG–1833, ''Technical Bases for Revision to the License Renewal Guidance Documents.'' This document describes the technical bases for the revision of NUREG–1801, ''Generic Aging Lessons Learned (GALL) Report'' and NUREG–1800 ''Standard Review Plan for the Review of License Renewal Applications for Nuclear Power Plants'' (SRP–LR).

ADDRESSES: Copies are available in the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. This document may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS accession number ML052110003. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Dozier, License Renewal Project Manager, Office of Nuclear Reactor Regulation, Mail Stop O–11F1, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1014, or by e-mail at *jxd@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Technical Bases for Revision to the License Renewal Guidelines Documents

The NRC staff has written NUREG–1833 to document and justify the technical changes to the GALL Report and SRP–LR since the 2001 publication. The changes that were made when revising these license renewal guidance documents are captured in NUREG–1833, along with the bases for technical changes. Changes to the GALL Report and SRP–LR are in the following categories: (1) Roll-Up Changes; (2) Incorporation of NRC Positions; (3) Operating Experience; and (4) Technical or Process Clarifications and Corrections.

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

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5–5947 Filed 10–25–05; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. MC2006–1; Order No. 1447]

Permanent Parcel Return Service

AGENCY: Postal Rate Commission.

ACTION: Notice and order.

SUMMARY: Parcel Return Service (PRS), which the Postal Service currently offers on an experimental basis for two parcel post rate categories, was scheduled to expire October 19, 2003. Shortly before the expiration date, the Service filed a request to establish one of these categories (Parcel Select) as a permanent offering and to allow users to purchase an optional ancillary service (Certificate of Mailing). Participants in the experiment were not eligible for this ancillary service during the experimental stage. The Service's request triggered an automatic extension of the October 19, 2005 expiration date for Parcel Select. Given no participation in the other experimental category (Bound Printed Matter), the Service does not seek to make it permanent, and it expired as scheduled. This document establishes a formal docket to address the requested change in status for the PRS Parcel Select category and identifies several initial steps, including authorization of settlement negotiations.

DATES: 1. November 10, 2005: deadline for intervention.

2. November 17, 2005: deadline for responses to waiver motion; prehearing conference (10 a.m.).

3. November 14–15, 2005: dates reserved for settlement conference.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, at 202–789–6818.

SUPPLEMENTARY INFORMATION:

Regulatory History

1. 68 FR 34678 (June 10, 2003).
2. 68 FR 48963 (August 15, 2003).

On October 17, 2005, the Postal Service filed a request seeking a recommended decision approving a change in the Domestic Mail Classification Schedule (DMCS) making Parcel Return Service (PRS) permanent.[1] A current experiment has been testing distinct rates and fees for certain parcels that are returns from customers to merchants. The Request, which includes five attachments, was filed pursuant to chapter 36 of the Postal Reorganization Act, 39 U.S.C. 3601 *et seq.*[2]

The Postal Service has been offering experimental PRS since October 19, 2003, in accordance with the Commission's recommended decision approving the stipulation and agreement in Docket No. MC2003–2 and the Governor's Decision of September 8, 2003, approving the recommendation. The experiment was scheduled to expire on October 19, 2005, unless a request to make the service permanent was pending before the Commission prior to that date.

In contemporaneous filings, the Postal Service requests establishment of settlement procedures [3] and submits a conditional motion for waiver of the filing requirements.[4] The Request, accompanying testimony of witnesses Daniel (USPS–T–1), Miller (USPS–T–2), and Koroma (USPS–T–3), and other related material are available for inspection in the Commission's docket room during regular business hours. They also can be accessed electronically, via the Internet, on the Commission's Web site (*http://www.prc.gov*).

I. Proposed Parcel Return Service

The Postal Service proposes to make permanent a PRS applicable to merchandise returned as Parcel Post. This service allows commercial mailers or their third-party logistics providers to receive bulk delivery of returned parcels at a designated delivery unit or at a bulk mail center (BMC). The Postal Service offers PRS as a customer-friendly and more efficient means for consumers to return parcels to mail-order retailers. PRS is designed to be consistent with destination entry services provided at delivery units or BMCs, so that returned parcels can be picked up at the same facilities where outgoing packages are entered. This allows participants to benefit from the increased efficiency of dropping off and picking up parcels concurrently.

The experiment recommended in Docket No. MC2003–2 included PRS for Bound Printed Matter (BPM) and Parcel Select rate categories. The BPM category did not garner any participation. Thus, a permanent classification is only requested for the Parcel Select rate categories. No permanent classification is being requested for BPM.

The Postal Service also seeks classification changes to allow the certificate of mailing service to be available for purchase with PRS. This was not a part of the original experiment.

PRS would add two new rate categories to the Parcel Post subclass, Parcel Select Return Delivery Unit (RDU), and Parcel Select Return Bulk Mail Center (RBMC). The proposed RDU rate for mail retrieved in bulk at delivery units is $2.11 per parcel for all parcels except oversized parcels. The proposed RDU rate for oversized parcels is $7.92. The proposed RBMC rates are identical to those proposed in the Postal Service's pending Docket No. R2005–1 request.[5]

The proposed rates are based on workshare savings for returned parcels retrieved in bulk by shippers (or their agents) at designated delivery units or BMCs. The Postal Service indicates that the cost avoidance measures underlying its proposed rates are estimated using the same cost methodology and cost model presented in Docket No. MC2003–2 by witness Eggleston. The cost model has been modified to incorporate Docket No. R2005–1 data, as well as information obtained from field personnel. The Postal Service estimates that making this service permanent would add approximately $35 million to the Postal Service's revenue, around 2.8 percent of Parcel Post total revenue, and 0.05 percent of total domestic mail revenue. It claims that PRS should not materially affect Parcel Post's contribution to institutional costs relative to other subclasses.

II. Conditional Request for Waiver of Certain Filing Requirements

The Postal Service asserts that its filing complies with applicable Commission filing requirements through incorporation by reference but, as a precautionary alternative, seeks waiver of various filing requirements should the Commission conclude otherwise.[6] In support of its Request, the Postal Service states that its Compliance Statement (Attachment E to the Request) addresses each filing requirement and indicates which parts of the filing satisfy each rule. It also notes that it has incorporated by reference pertinent materials from Docket No. R2005–1, the most recent omnibus rate case.[7] It contends that incorporation satisfies the filing requirements pertaining to classes of mail and special services. In addition, the Postal Service contends that the PRS will not materially alter the rates, fees and classifications established in Docket No. R2005–1; rather, it would make permanent certain experimental classifications with the rates already proposed in that docket. Id. at 1. It concludes that its proposal will have only a limited impact on overall postal costs, volumes and revenues. Ibid. It also asserts that there is substantial overlap between information sought in the general filing requirements and the materials provided in Docket No. R2005–1. Id. at 2.

Notwithstanding its principal position, the Postal Service recognizes that the Commission may find that it has failed to comply with the filing requirements. Accordingly, the Postal Service requests a waiver of certain filing requirements if the Commission concludes that the materials incorporated from the omnibus case are not sufficient to satisfy those requirements. Id. at 3.

III. The Postal Service Request for Settlement Procedures

In support of its request for settlement procedures, the Postal Service asserts that the proposed classification change is straightforward, is of limited scope, and is the culmination of a successful two-year experiment established in Docket No. MC2003–2. Further, the Postal Service states that because the experimental service that the Request is

[1] Request of the United States Postal Service for a Recommended Decision on Parcel Return Service, October 17, 2005 (Request).

[2] Attachment A contains the proposed classification schedule provisions; Attachment B sets forth the proposed rate and fee schedules; Attachment C is the certification required by Commission rules 64(h) and 54(p); Attachment D is an index of testimonies; and Attachment E is the statement addressing compliance with various filing requirements.

[3] United States Postal Service Request for Establishment of Settlement Procedures, October 17, 2005 (Request for Establishment of Settlement Procedures).

[4] Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, October 17, 2005 (Motion for Waiver).

[5] Compare Request Attachment B with Docket No. R2005–1, Request of the United States Postal Service for a Recommended Decision on Changes in Rates of Postage and Fees for Postal Services, April 8, 2005, Attachment A at 43–49.

[6] The Request seeks a waiver of rules 54 and 64. Motion for Waiver at 3.

[7] Motion for Waiver at 1 and 3.

based upon resulted in settlement, it believes that the same level of widespread support exists for making the service permanent, and that it should have no significant adverse impact on other mailers or competitors. Accordingly, the Postal Service believes there is a distinct possibility for settlement.[8] The Postal Service requests that a settlement conference be scheduled as soon as possible following the deadline for intervention. Id. at 2.

IV. Commission Response

Intervention. Those wishing to be heard in this matter are directed to file a notice of intervention on or before November 10, 2005. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site (*http://www.prc.gov*), unless a waiver is obtained for hardcopy filing. 39 CFR 3001.9(a) and 10(a). No decision has been made at this point on whether a hearing will be held in this case. Notices should indicate whether participation will be on a full or limited basis. See 39 CFR 3001.20 and 3001.20a.

Settlement. Given the Postal Service's representations that the proposal is widely supported and should not adversely affect competitors or other mailers, the Commission will authorize settlement negotiations in this proceeding. It appoints Postal Service counsel as settlement coordinator. In this capacity, Postal Service counsel shall file periodic reports on the status of settlement discussions. The Commission authorizes the settlement coordinator to hold a settlement conference on November 14–15, 2005. The Commission will make its hearing room available for this purpose upon request. Authorization of settlement discussions does not constitute a finding on the necessity of hearings in this case.

Prehearing conference. A prehearing conference will be held November 17, 2005, at 10 a.m. in the Commission's hearing room. Participants shall be prepared to identify any issue(s) that would indicate a need to schedule a hearing, along with other matters referred to in this ruling.

Conditional Motion for Waiver. Participants may comment on the Postal Service's conditional motion to waive certain filing requirements. Responses to the Postal Service's Motion for Waiver are due on or before November 17, 2005.

Representation of the general public. In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

V. Ordering Paragraphs

It is ordered:

The Commission establishes Docket No. MC2006–1, Parcel Return Service, to consider the Postal Service Request referred to in the body of this order.

1. The Commission will sit en banc in this proceeding.

2. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding. The Commission will make its hearing room available upon request for a settlement conference on November 14–15, 2005, at such times as scheduled by the settlement coordinator.

3. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

4. The deadline for filing notices of intervention is November 10, 2005.

5. A prehearing conference will be held November 17, 2005, at 10 a.m. in the Commission's hearing room.

6. Responses to the Postal Service's Conditional Motion for Waiver of certain filing requirements are due on or before November 17, 2005.

7. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Issued: October 21, 2005.

Garry J. Sikora,

Acting Secretary.

[FR Doc. 05–21401 Filed 10–25–05; 8:45am]

BILLING CODE 7710–FW–P

[8] Request for Settlement Procedures at 1–2.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27118; File No. 812–13195]

Ameritas Variable Life Insurance Company, et al.: Notice of Application

October 20, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the ''1940 Act'' or ''Act'') approving certain substitutions of securities and for an order of exemption pursuant to Section 17(b) of the Act from Section 17(a) of the Act.

Applicants: Ameritas Variable Life Insurance Company (''Ameritas''), Ameritas Variable Life Insurance Company Separate Account V (''Account V'') and Ameritas Variable Life Insurance Company Separate Account VA–2 (''Account VA–2'', together with Account V ''Separate Accounts'') and Ameritas Investment Corp. (''Ameritas Investment'') (collectively, the ''Applicants'').

Summary of Application: The Applicants request an order pursuant to Section 26(c) of the 1940 Act to permit the substitution of shares of Calvert Variable Series, Inc.'s Ameritas Portfolios (''Ameritas Portfolios'') Income & Growth Fund (''Ameritas Income & Growth'' or ''Replacement Fund'') for (a) shares of Alger American Leveraged AllCap—Class 0 Portfolio (''Alger AllCap'') of the Alger American Fund and (b) shares of Salomon Variable All Cap Portfolio (''Salomon Variable All Cap'') of the Salomon Brothers Variable Series Trust (Alger AllCap and Salomon Variable All Cap collectively, the ''Substituted Portfolios'') currently held by the Separate Accounts. Applicants also request an order of exemption pursuant to Section 17(b) of the 1940 Act from the provisions of Section 17(a) of the Act to permit certain in-kind transactions in connection with the substitutions.

Filing Date: The application was filed on May 31, 2005 and amended and restated on September 12, 2005, September 29, 2005, October 3, 2005 and October 7, 2005.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested person may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 14, 2005, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

Applicants, c/o Kenneth W. Reitz, Ameritas Variable Life Insurance Company, 5900 ''O'' Street, Lincoln, NE 68501.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or William J. Kotapish, Assistant Director, Office of Insurance Products, Division of Investment Management at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Room 1580, Washington, DC 20549 (telephone (202) 551–5850).

Applicants' Representations

1. Ameritas is a stock life insurance company organized in the State of Nebraska currently licensed to sell life insurance in 49 states (all except New York) and in the District of Columbia. Ameritas is a wholly owned subsidiary of AMAL Corp. which is a direct subsidiary of Ameritas Life Insurance Corp. Ameritas Life Insurance Corp. is a subsidiary of Ameritas Acacia Mutual Holding Company.

2. Ameritas Investment, a Nebraska corporation, is registered as an investment adviser under the 1940 Act and as a broker-dealer under the Securities Exchange Act of 1934. Ameritas Investment is an affiliate of Ameritas. Ameritas Investment is the investment adviser of the Ameritas Portfolios and principal underwriter of the Contracts.

3. Account V is a separate account established by Ameritas under Nebraska law to fund variable life insurance contracts issued by Ameritas. Account VA–2 is a separate account established by Ameritas under Nebraska law to fund variable annuity contracts issued by Ameritas. Account V and Account VA–2 are registered under the 1940 Act as unit investment trusts (File Nos. 811–04473 and 811–05192 respectively). The variable life insurance contracts and variable annuity contracts issued through the Separate Accounts (together, ''Contracts'') have been registered under the 1933 Act.

4. Calvert Variable Series, Inc. (''CVS'') is registered under the 1940 Act as an open-end management investment company of the series type. The Ameritas Portfolios, including Ameritas Income and Growth, are series of CVS. CVS obtained an order pursuant to Section 6(c) of the 1940 Act exempting it and Ameritas Investment, as investment advisor, from Section 15(a) of the 1940 Act with respect to subadvisory agreements (the ''Manager of Managers Order''). The Manager of Managers Order permits Ameritas Investment to replace any sub-adviser or to employ a new sub-adviser for each of its series without obtaining shareholder approval. At a meeting held on January 15, 2002, shareholders of each Ameritas Portfolio approved the implementation of procedures contemplated in the Manager of Managers Order. Fred Alger Management, Inc. is the subadviser to Ameritas Income & Growth.

5. Each of the Contracts permits its owners to allocate the Contract's accumulated value among numerous Subaccounts of the Separate Accounts. Each Subaccount invests exclusively in a different investment portfolio (''Fund'') of an underlying mutual fund. Depending on the Contract, between twenty-one and thirty-six different Subaccounts (and corresponding funds) are currently available for this purpose.

6. Contract Owners can allocate accumulated Contract value to one or more Subaccounts and/or, where available, to the Fixed Account, subject to certain potential restrictions described in the application and in the prospectus relating to each Contract. No sales charge applies to any transfer of accumulated Contract value among Subaccounts. Applicants represent that the relief requested here will not affect any charge to which Contract Owners of any Contract would otherwise be subject, or affect any right or privilege to which such owners are otherwise entitled.

7. The Contracts expressly reserve to Ameritas the right to substitute shares of another investment company for shares of an investment company held by a Subaccount of the Separate Accounts. Ameritas proposes to substitute shares of Ameritas Income and Growth for shares of (a) Alger AllCap and (b) Salomon Variable All Cap held by Subaccounts of the Separate Accounts (each a ''Substitution'' and together, the ''Substitutions'').

8. The investment objectives and principal investment policies of the Replacement Fund and the Substituted Portfolios are as follows: Ameritas Income & Growth primarily seeks to provide a high level of dividend income, with a secondary goal to provide capital appreciation, by investing in dividend paying equity securities, such as common or preferred stocks, preferably those which the subadviser believes also offer opportunities for capital appreciation. Alger AllCap seeks long-term capital appreciation by investing in equity securities of companies of any size which demonstrate promising growth potential. Salomon Variable All Cap seeks capital appreciation by investing primarily in securities which the manager believes have above-average capital appreciation potential. A secondary consideration is given to a company's dividend record and the potential for improved dividend return. Salomon Variable All Cap invests primarily in common stocks and common stock equivalents of large well known domestic companies, but may also invest a significant portion of its assets in securities of small to medium-sized companies and may invest in fixed income securities, convertible debt securities, securities of foreign issuers, and in non-dividend paying stocks.

9. Following is the comparative expense data for the Substitutions as of December 31, 2004. Applicants submit that each Substitution will result in a Replacement Fund with net expenses and management fees less than the Substituted Fund. Applicants also represent that there are no breakpoints in fund expenses for either the Substituted Funds or the Replacement Fund.

[In percent]

	Substituted fund Alger AllCap	Replacement fund Ameritas Income & Growth	Substituted fund Salomon Variable All Cap	Replacement fund Ameritas Income & Growth
Management Fees	0.85	0.74	0.75	0.74
Distribution and service (12b–1) fees	.....	.....	.....	.....
Other Expenses	0.12	0.22	0.05	0.22
Total Expenses	0.97	0.96	0.80	0.96
Waivers	.....	[1] 0.18	.....	[2] 0.18

[In percent]

	Substituted fund Alger AllCap	Replacement fund Ameritas Income & Growth	Substituted fund Salomon Variable All Cap	Replacement fund Ameritas Income & Growth
Net Expenses	0.97	0.78	0.80	0.78

[1] Pursuant to a contractual agreement between Ameritas Portfolios and Ameritas Investment, Ameritas Investment, has agreed to waive fees or reimburse expenses so that Total Expenses do not exceed the rate shown in the table above through April 30, 2006. Management Fee includes both the investment advisory fee and administrative service fee. The administrative service fee is 0.05% of the fund's average daily net assets with a minimum of $50,000.

[2] Supra, footnote 1.

10. The day-to-day manager of both the Substituted Alger AllCap Fund as its adviser and to the Replacement Ameritas Income & Growth Fund as its subadviser is Fred Alger Management, Inc.

11. Applicants note that Contract Owners with Subaccount balances invested in shares of the Replacement Funds will have lower total expense ratios than they currently have in the Substituted Funds. Moreover, there will be no increase in Contract fees and expenses including mortality and expense risk fees and administration and distribution fees charged to the Separate Accounts as a result of the Substitutions. Applicants believe that, if the proposed Substitutions are implemented, the core investment goals of affected Contract Owners will not be frustrated and the investment expectations of affected Contract Owners can continue to be met. Applicants expect that the Substitutions will provide significant benefits to Contract Owners, including improved selection of portfolio managers and simplification of fund offerings through the elimination of overlapping offerings.

Applicants state that Ameritas considered the performance history of the Substituted Funds and the Replacement Funds and determined that no Contract Owners would be materially adversely affected as a result of the Substitutions. Applicants believe that the Substitutions, each of which replaces outside funds with a fund for which Ameritas Investment acts as investment advisor, will permit Ameritas Investment, under a multi-manager order granted by the Commission and under shareholder approval previously obtained, to hire, monitor and replace subadvisers as necessary to seek optimal performance and to ensure a consistent investment style. Applicants further believe that the subadviser to the Replacement Fund is better positioned to provide consistent above-average performance for its Fund than the adviser or subadvisers of the Substituted Funds. Applicants state that Contract Owners will continue to be able to select among a large number of funds, with a full range of investment objectives, investment strategies, and managers. Applicants believe there will also be a significant savings to Contract Owners because certain costs, such as the costs of printing and mailing lengthy periodic reports and prospectuses for the Substituted Funds will be substantially reduced.

12. Applicants represent that they will not receive, for three years from the date of the Substitutions, any direct or indirect benefits from the new fund, its advisors or underwriters, or from affiliates of the new funds, their advisors or underwriters, in connection with assets attributable to Contracts affected by the Substitutions, at a higher rate than Applicants have received from substituted funds, their advisors or underwriters, or from affiliates of substituted funds, their advisors or underwriters, including without limitation Rule 12b–1 fees, shareholder service or administrative or other service fees, revenue sharing or other arrangements (collectively ''Revenue Arrangements''). Applicants represent that the substitutions and the selection of the new fund was not motivated by any financial consideration paid or to be paid to Applicants or any affiliate of Applicants by the new fund, its advisors, underwriters, or affiliates.

13. The proposed Substitutions will take place at relative net asset value with no change in the amount of any Contract Owner's Contract value, cash value, or death benefit or in the dollar value of his or her investment in the Separate Accounts. Applicants expect that the Substitutions will be effected by redeeming shares of a Substituted Fund and reinvesting the proceeds of such redemption in shares of the Replacement Fund through a combination of cash and ''in kind'' transactions.

14. Contract Owners will not incur any fees or charges as a result of the proposed Substitutions, nor will their rights or Ameritas' obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed Substitutions, including brokerage, legal, accounting, and other fees and expenses, will be paid by Ameritas. In addition, the proposed Substitutions will not impose any tax liability on Contract Owners. The proposed Substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed Substitutions than before the proposed Substitutions. No fees will be charged on the transfers made at the time of the proposed Substitutions because the proposed Substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year.

15. Following the date on which Ameritas is notified that the notice of the Application is to be published in the **Federal Register**, but before the date on which the order requested by the application becomes effective, Ameritas will send to affected Contract Owners notice (''Substitution Notice''). The Substitution Notice will inform affected Contract Owners of (a) the Effective Date of the Substitutions (''Effective Date''); (b) the right of each affected Contract Owner, under their Contract, to transfer contract values among the various Subaccounts; and (c) the fact that any such transfer involving a transfer from a substituted fund will not be subject to any administrative charge and will not count as one of the ''free transfers'' to which affected Contract Owners may otherwise be entitled. The Substitution Notice will also inform affected Contract Owners that (a) Ameritas will not exercise any rights reserved under any Contract to impose additional restrictions on transfers (other than with respect to ''market timing'' activity described in each Contract's prospectus) until at least 30 days after the proposed Substitutions; (b) for 30 days after the proposed Substitutions, Ameritas will permit affected Contract Owners to make transfers of Contract value (or annuity unit exchange) out of the

Replacement Fund Subaccount to another Subaccount without the transfer (or exchange) being treated as one of a limited number of transfers (or exchanges) permitted without a transfer charge.

16. Within five days after the Effective Date, Ameritas will also send affected Contract Owners a second written notice (''Confirmation Notice''). The Confirmation Notice will (a) confirm that the Substitutions were carried out; (b) reiterate that each affected Contract Owner may transfer all of the contract value or cash value under a Contract that is invested in a Substituted Fund to any other Subaccount available under their Contract without such transfer being subject to any administrative charge, or being counted as one of the ''free transfers'' (or one of the limited number of transfers) to which affected Contract Owners may be entitled under the Contracts; and (c) state that, other than with respect to ''market timing'' activity described above, Ameritas will not exercise any rights reserved by it under the Contracts to impose additional restrictions on transfers until at least 30 days after the Effective Date.

17. For those who were Contract Owners on the date of the proposed Substitutions, Ameritas and Ameritas Investment will reimburse, on the last business day of each fiscal period (not to exceed a fiscal quarter) during the twenty-four months following the date of the proposed Substitutions, the Subaccount investing in the Replacement Fund such that the sum of the Replacement Fund's operating expenses (taking into account fee waivers and expense reimbursements) and Subaccount expenses (asset-based fees and charges deducted on a daily basis from Subaccount assets and reflected in the calculation of Subaccount unit values) for such period will not exceed, on an annualized basis, the sum of the Replacement Fund's operating expenses (taking into account fee waivers and expense reimbursements) and Subaccount expenses for the fiscal year preceding the date of the proposed Substitutions. In addition, for twenty-four months following the proposed Substitutions, Ameritas and Ameritas Investment will not increase separate account fees or charges for Contracts outstanding on the date of the proposed Substitutions.

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act provides, in pertinent part, that ''it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' Section 26(c) of the 1940 Act also provides that the Commission shall issue an order approving such substitutions if the evidence establishes that the substitutions are consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. The Contracts expressly reserve to Ameritas the right, subject to compliance with applicable law, to substitute shares of another investment company for shares of an investment company held by a Subaccount of the Separate Accounts. Applicants assert that the prospectuses for the Contracts and the Separate Accounts contain appropriate disclosure of this right.

3. In each case, Applicants believe that it is in the best interests of the Contract Owners to substitute the Replacement Fund for the Substituted Fund. In this regard, Applicants contend that the proposed Replacement Fund for each Substituted Fund has an investment objective that is at least substantially similar to that of the Substituted Fund. Applicants also assert that the principal investment policies of the Replacement Funds are similar to those of the corresponding Substituted Funds. In addition, with respect to each proposed substitution, Applicants note that affected Contract Owners with balances invested in the Replacement Fund will have a lower or the same expense ratio in all cases.

4. Applicants anticipate that Contract Owners will be better off with the array of Subaccounts offered after the proposed Substitutions than they have been with the array of Subaccounts offered prior to the Substitutions. The proposed Substitutions retain for Contract Owners the investment flexibility which is a central feature of the Contracts. If the proposed Substitutions are carried out, all Contract Owners will be permitted to allocate purchase payment and transfer Contract values and cash values between and among approximately the same number of Subaccounts as they could before the proposed Substitutions. Moreover, the elimination of the costs of printing and mailing prospectuses and periodic reports of the Substituted Funds will benefit Contract Owners.

5. Applicants note that Contract Owners who do not wish to participate in a Replacement Fund will have an opportunity to reallocate their accumulated value among other available Subaccounts without the imposition of any charge or limitation (other than with respect to ''market timing'' activity).

6. Applicants assert that, for the reasons summarized above, the proposed Substitutions and related transactions meet the standards of Section 26(c) of the 1940 Act and that the requested order should be granted.

7. Sections 17(a)(1) and (2) of the 1940 Act prohibit an affiliated person of a registered investment company, or affiliated persons of any such affiliated person, or any principal underwriter for such company (collectively, ''Transaction Affiliates'') from selling a security to, or purchasing a security from, the registered investment company. Applicants may be deemed to be Transaction Affiliates of one another based upon the definition of ''affiliated person'' under Section 2(a)(3) of the 1940 Act. Because the Substitutions may be effected, in whole or in part, by means of in-kind redemptions and purchases, the Substitutions may be deemed to involve one or more purchases or sales of securities or property between Transaction Affiliates.

8. Section 17(b) provides that the Commission may grant an application exempting proposed transactions from the prohibitions of Section 17(a) if the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned; the transaction is consistent with the investment policies of each registered investment company concerned; and the transaction is consistent with the general purposes of the Act. Applicants state that the consideration to be paid by the Replacement Fund, and each of the Substituted Funds, will be fair and reasonable and will not involve overreaching because the Substitutions will not result in the dilution of the interests of any affected Contract Owners and will not effect any change in economic interest, Contract value or the dollar value of any variable contract held by an affected Contract Owner.

9. In addition, Applicants state that to the extent the Substitutions are effected by redeeming shares of the Substituted Funds and using the redemption proceeds to purchase shares of the Replacement Funds, the Substitutions will satisfy each of the procedural safeguards adopted by the Board of Directors responsible for each of the Ameritas Portfolios and the Substituted Funds, respectively under Rule 17a–7 under the 1940 Act.

Applicants' Conclusion

Applicants assert that for the reasons summarized above the proposed substitutions and transactions meet the standards of Section 26(c) of the Act and are consistent with the standards of

Section 17(b) of the Act and that the requested orders should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5944 Filed 10–25–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52646; File No. SR–Amex–2005–068]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Amendments to Amex Rules 26 and 27

October 20, 2005.

On June 17, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (i) Combine the Equities, Options and Special Allocations Committees into a single Allocations Committee; (ii) change the composition of the new Allocations Committee; and (iii) provide the Performance Committee with sole authority to reallocate securities in connection with specialist unit transfers resulting from business transactions. On June 30, 2005, Amex filed Amendment No. 1 to the proposed rule change.[3] On August 19, 2005, Amex filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on September 1, 2005.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The proposed rule change would combine the existing Equity, Options and Special Allocations Committees into a single Allocations Committee for equities, options and other listed securities. The proposal would create a single Allocations Committee consisting of the Chief Executive Officer (or his or her designee [6]), a representative of an upstairs member firm and either: (i) Four (4) brokers for equities and other securities admitted to trading on the Exchange except for Exchange Traded Funds and options; (ii) two (2) brokers and two (2) Registered Traders for ETFs; or (iii) two (2) brokers and two (2) Registered Options Traders for options. The Chief Executive Officer (or his or her designee) would chair the Allocations Committee and would not vote except to make or break a tie. In the absence of the Chief Executive Officer (or his or her designee), a Floor Governor or a Senior Floor Official may chair the Allocation Committee. In addition, the Exchange proposes to permit the Performance Committee to reallocate securities in connection with specialist unit transfers resulting from business transactions.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act,[7] and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[9] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that, by combining the Equities, Options and Special Allocations Committees into a single Allocations Committee and streamlining the composition of the Allocations Committee, the proposed rule change is designed to reduce potential inefficiencies in connection with the securities allocation process. In addition, the Commission believes that, by providing the Performance Committee with the sole authority to reallocate securities in connection with specialist unit transfers, the proposed rule change is designed to streamline the reallocation process in these special circumstances.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–2005–068), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5946 Filed 10–25–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made a technical correction to the proposed amendment to Amex Rule 26 and proposed to amend Amex Rule 27 to reflect that, in the case of an equity security, the list of qualified specialists shall consist of five specialists.

[4] In Amendment No. 2, the Exchange proposed to amend Amex Rule 27 to clarify: (1) the composition of the Allocations Committee for equities and other securities admitted for trading on the Exchange except Exchange Traded Funds (''ETFs'') and options; and (2) that the Allocations Committee may be chaired by the Chief Executive Officer's designee.

[5] *See* Securities Exchange Act Release No. 52334 (August 25, 2005), 70 FR 52146.

[6] The Exchange represents that the designee of the Chief Executive Officer would be an Exchange employee knowledgeable about the securities business and capable of representing the views of the Chief Executive Officer. Telephone conversation of October 12, 2005, between Jeffery Burns, Associate General Counsel, Amex, and David Michehl, Attorney, Division of Market Regulation, Commission.

[7] 15 U.S.C. 78f(b).

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52639; File No. SR–BSE–2005–41]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change To Establish Certain Fees With Respect to Transactions Executed Through the Intermarket Trading System

October 19, 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 9, 2005, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to enter into arrangements with other national securities exchanges to pass certain fees they have collected from members for transactions executed on another exchange through the Intermarket Trading System (''ITS''). This proposal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

does not require changes to BSE rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 31 of the Act [3] requires each national securities exchange to pay the Commission a fee based on the aggregate dollar amount of certain sales of securities (''covered sales''). Rules 31 and 31T, adopted by the Commission in June 2004,[4] established procedures for the calculation and collection of Section 31 fees on such covered sales. Rule 31 requires each national securities exchange that owes Section 31 fees to submit a completed Form R31 to the Commission each month, beginning with July 2004. Rule 31T required each exchange to submit a completed Form R31 for each of the months September 2003 to June 2004, inclusive. Each national securities exchange must report its covered sales volume based on the data from a designated clearing agency, when available. The designated clearing agency for covered sales of equity securities is the National Securities Clearing Corporation (''NSCC''). These covered sales are reported in Part I of Form R31, and each exchange is required to ''provide in Part I only the data supplied to it by a designated clearing agency.'' [5] The data supplied by NSCC for the period September 2003 through August 2004 did not accurately reflect the aggregate dollar value of the covered sales occurring on each exchange to permit reports to be made in accordance with new Rules 31 and 31T. In particular, the data NSCC reported to each national securities exchange included non-covered sales data for sales originating on one exchange and executed on another exchange through the ITS.[6]

Section 31 requires that national securities exchanges pay a fee based on the aggregate dollar amount of sales of securities transacted on the exchange. Given the specific language of Section 31, the Commission in the Adopting Release for Rules 31 and 31T advised that the current methodology for treating sales of securities that occur through ITS [7] was no longer appropriate and that ''it would be simpler and more transparent for each covered [self-regulatory organization (''SRO'')] to report all covered sales that occur on its market.'' The Commission further stated:

> The Commission acknowledges that a covered SRO on which a covered sale occurs as a result of an incoming ITS order may not be able to collect funds to pay the Section 31 fee from one of its own members. However, Section 31 does not address the manner or extent to which covered SROs may seek to recover the amounts that they pay pursuant to Section 31 from their members. Covered SROs may wish to devise new arrangements for passing fees between themselves so that the funds are collected from the covered SRO that originated the ITS order.[8]

The Commission further noted that any such arrangements devised by the SROs would have to be established pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder.

A subcommittee of the ITS Operating Committee [9] (''Subcommittee'') has had discussions in order to devise new arrangements for passing fees between the ITS participants that (1) were collected from their members for the months of September 2003 through August 2004; and (2) are being collected from their members beginning in September 2004 and continuing. This proposed rule change is being submitted by the BSE with the understanding that the other exchanges participating in the proposed arrangement devised by the subcommittee will be submitting substantially similar rule change proposals.[10]

Pursuant to the new arrangement being proposed, each ITS participant exchange determines whether it has received and executed more in dollar value of covered sales than it has originated and sent to each other ITS participant exchange. For example, for the historical period, September 2003 through August 2004, SRO A sent ITS commitments for covered sales whose dollar value was $150 million to SRO B for execution. SRO A collected fees from its members to fund its Section 31 obligation for those covered sales executed on SRO B. SRO B, as the executing market center, is obligated to pay the Section 31 fee to the SEC. During the same period, SRO B sent ITS commitments for covered sales whose dollar value was $210 million to SRO A. SRO B collected fees from its members for those covered sales executed on SRO A. SRO A, as the executing market center, is obligated to pay the Section 31 fee to the SEC. Since SRO A executed a greater dollar value of covered sales from SRO B than it sent to SRO B, the proposed arrangement requires SRO A to determine the amount of the fees collected by SRO B from its members based on the aggregate dollar value of covered sales from SRO B and executed on SRO A through ITS commitments. When invoicing SRO B, SRO A will deduct the amount of the fee it owes to SRO B (*i.e.*, the fee amount based on SRO A's $210 million in aggregate covered sales less the fee amount based on SRO B's $150 million in aggregate covered sales) and will invoice only for the difference of $60 million.

Once the fees have been invoiced and paid for the historical period, the ITS participant exchanges plan to use the same arrangement for the period beginning September 2004 and continuing. It is anticipated that the invoicing process will occur twice yearly to coincide with the March 15

[3] 15 U.S.C. 78ee.

[4] *See* Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060 (July 7, 2004) (''Adopting Release'').

[5] 17 CFR 240.31(b)(5).

[6] As a result of this and other inaccuracies in the data reported by NSCC, the national securities exchanges were unable to report accurate information on Form R31, unless they made adjustments to the NSCC data based on data other than that provided by NSCC. On October 6, 2004, the Commission's Division of Market Regulation (''Division'') issued a ''no-action'' letter advising exchanges for whom NSCC acts as a designated clearing agency under Rule 31, that the Division staff would not recommend that the Commission take enforcement action if a national securities exchange adjusts the data provided by NSCC to accurately reflect covered sales occurring on the national securities exchange. *See* letter from Robert L.D. Colby, Deputy Director, Division, Commission to Ellen J. Neely, Senior Vice President and General Counsel, Chicago Stock Exchange, Inc. (''CHX''), dated October 6, 2004.

[7] In the Adopting Release, the Commission described the current methodology: ''SRO A sends an ITS commitment to a member of SRO B to sell a security, and the commitment is executed on SRO B. Under existing arrangements, SRO A pays the Section 31 fee arising from this trade and passes the fee to its member that initiated the trade. * * * [T]he SROs devised this system because SRO B does not have the ability to require members of SRO A to reimburse it for the cost of its Section 31 fees.'' Adopting Release, 69 FR at 41067.

[8] *Id.*

[9] The ITS participants are American Stock Exchange LLC, BSE, Chicago Board Options Exchange, CHX, National Association of Securities Dealers (''NASD''), National Stock Exchange, New York Stock Exchange (''NYSE''), Pacific Exchange, and Philadelphia Stock Exchange.

[10] NASD has determined not to participate in the arrangement for passing fees between exchanges although they participated in many of the conference calls regarding the proposed arrangement.

and September 30 payment schedule for Section 31 fees set forth in the Act.

To implement this proposed arrangement, an ITS participant exchange will require access to the aggregate dollar value of buy and sell transactions occurring through ITS. Under the proposed arrangement for fees collected for the months of September 2003 through August 2004, an ITS participant exchange may choose to use data obtained from the Inter-market Surveillance Information System (''ISIS'') or data that provides comparable information that includes aggregate dollar value of ITS transactions.[11] The ISIS data is sorted by originating market center (*i.e.*, the sender of an ITS commitment) and receiving market center (*i.e.*, the market center that executes the ITS commitment). Using this data, each ITS participant exchange can determine on a monthly basis the dollar value of all executed commitments sent to and received from another ITS participant exchange.

At its meeting on February 23, 2005, the Subcommittee asked the Securities Industry Automation Corporation (''SIAC'') to determine the time and expense involved for SIAC to use the ITS database that it maintains to provide reports of the aggregate dollar value of buy and sell transactions occurring through ITS to the ITS participants. On March 15, 2005, representatives of the Subcommittee authorized SIAC to develop new reports. SIAC has developed these reports. Once a parallel testing period for the new reports in concluded, it will no longer be necessary for ISIS data to be used. The new reports provided by SIAC will be used by ITS participants in connection with determining which ITS participant exchange will pay the fee for transactions occurring through ITS and which ITS participant exchange has collected the fee from its members.

The BSE believes that the proposed arrangement is a fair and efficient means for passing fees collected at one ITS participant exchange based upon executions of covered sales occurring at another ITS participant exchange. The BSE acknowledges that the legal duty to report and pay the Section 31 fee remains with the ITS participant on which the sale was in fact transacted.

2. Statutory Basis

This proposal would establish a process for SROs to enter into arrangements to pass fees they have collected from members for transactions executed on another SRO through ITS. For these reasons, the Exchange believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[13] in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,[14] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2005–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–BSE–2005–41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2005–41 and should be submitted on or before November 16, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,[16] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. National securities exchanges obtain funds to pay their Section 31 fees to the Commission by charging fees to broker-dealers who generate the covered sales on which Section 31 fees are based. An exchange can obtain most of these funds by imposing a fee on one of its members whenever the member is on

[11] The NYSE has made available to the ITS participants spreadsheets for each month in the period using the ISIS data.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(4).

[15] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(4).

the sell side of a transaction. However, when the exchange accepts an ITS commitment to buy, the ultimate seller is a party on another market. The exchange lacks the ability to pass a fee to that seller directly, because the seller may not be a member of the exchange. Under the proposed arrangement, which the Commission understands will be adopted by each of the ITS participant exchanges,[17] the exchange that routed the ITS commitment away will continue to collect a fee from the broker-dealer that placed the sell order. Then, with respect to each ITS participant exchange, the exchange will determine whether it is a net sender or net receiver of ITS trades and send fees to or accept fees from each other exchange accordingly. The Commission believes this is an equitable manner for the exchanges to obtain funds to pay their Section 31 fees on covered sales resulting from ITS trades.

Under Section 19(b)(2) of the Act,[18] the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposed rule change prior to the thirtieth day after publishing notice of filing thereof in the **Federal Register**. In this case, the Commission does not believe a comment period is necessary because all of the parties affected by the proposed fee—the other ITS participant exchanges—have already consented to and will adopt the same fee arrangement.[19]

For the reasons set forth above, the Commission finds good cause to accelerate approval of the proposed rule change pursuant to Section 19(b)(2) of the Act.[20]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–BSE–2005–41) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5921 Filed 10–25–05; 8:45 am]

BILLING CODE 8010–01–P

[17] *See* letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, and Chairman, Subcommittee, to Michael Gaw, Assistant Director, Division, Commission, dated September 29, 2005.

[18] 15 U.S.C. 78s(b)(2).

[19] *See supra* note 17.

[20] *Id.*

[21] *Id.*

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52643; File No. SR–CBOE–2005–71]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Transaction Fees Assessed on DIAMONDS Options

October 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, Incorporated (''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 CBOE. On September 8, 2005, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] On October 17, 2005, the CBOE submitted Amendment No. 2 to the proposed rule change.[4] The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under section 19(b)(3)(A)(ii) of the Act,[5] and Rule 19b–4(f)(2) thereunder,[6] which renders the proposal effective upon filing with the Commission.[7] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule relating to fees for options on the DIAMONDS ® (''DIA''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room. The text of the proposed rule change is also included below. Proposed new language is *italicized;* proposed deletions are in [brackets].

Chicago Board Options Exchange, Inc.—Fees Schedule

[August 24]*September 1,* 2005

1. Options Transaction Fees (1)(3)(4)(7)(16): Per Contract.

Equity Options (13):

I.–IX. Unchanged.

QQQQ and SPDR OPTIONS:

I.–VII. Unchanged.

INDEX OPTIONS (includes Dow Jones DIAMONDS, OEF and other ETF and HOLDRs options):

I. CUSTOMER (2):	
S&P 100, PREMIUM > or = $1 ...	$.35
S&P 100, PREMIUM < $1	.20
MNX and NDX	.15
RUT and [REDUCED VALUE RUSSELL 2000]*RMN*	.15
ETF and HOLDRs options [*(except DIA)*]	.15
OTHER INDEXES, PREMIUM > OR = $1	.45
OTHER INDEXES, PREMIUM < $1	.25
II. MARKET-MAKER AND DPM—EXCLUDING DOW JONES PRODUCTS:	
OTHER THAN DIA (10)	.24
MARKET-MAKER—DOW JONES PRODUCTS *(except DIA)* (10)	.34
III. MEMBER FIRM PROPRIETARY: (11)	
FACILITATION OF CUSTOMER ORDER, MNX and NDX	.24
FACILITATION OF CUSTOMER ORDER, OTHER INDEXES	.20
NON-FACILITATION ORDER	.24
IV. BROKER-DEALER (EXCLUDING THE PRODUCTS BELOW) INDEX CUSTOMER RATES:	
ETF *(except DIA),* HOLDRS, RUT and [REDUCED VALUE RUSSELL 2000]*RMN,* PREMIUM > or = $1	.45

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made a technical change to the proposed rule text.

[4] In Amendment No. 2, the Exchange revised the proposed rule text to amend the transaction fees assessed to non-member market makers for orders in DIA options sent to CBOE through the Intermarket Options Linkage (''Linkage'') and outside of Linkage. The Exchange states that the transaction fees assessed to non-member market-makers for orders in DIA options sent to CBOE through Linkage or outside of Linkage will be implemented on November 1, 2005.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] The effective date of the original proposed rule change is September 1, 2005, the effective date of Amendment No. 1 is September 8, 2005, and the effective date of Amendment No. 2 is October 17, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on October 17, 2005, the date on which the Exchange submitted Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

ETF *(except DIA),* HOLDRS, RUT and [REDUCED VALUE RUSSELL 2000]*RMN,* PREMIUM < $1	.25
DIA, MNX and NDX	.25
V. NON-MEMBER MARKET MAKER:	
DIA	*$.26*
S&P 100 (including OEF), PREMIUM > or = $1	.37
S&P 100 (including OEF), PREMIUM < $1	.22
OTHER INDEXES, PREMIUM > or = $1	.47
OTHER INDEXES, PREMIUM < $1	.27
VI. MNX and NDX LICENSE FEE (15)	.10
VII. RUT DPM and MARKET MAKER LICENSE FEE	
(Russell 2000 cash settled index) (12)	.10
VIII. LINKAGE ORDERS (8)(15):	
DIA	*.26*
S&P 100 (OEF), PREMIUM > or = $1	.35
S&P 100 (OEF), PREMIUM < $1	.20
OTHER INDEXES, PREMIUM > or = $1	.45
OTHER INDEXES, PREMIUM < $1	.25

2. MARKET-MAKER, RMM, e-DPM & DPM MARKETING FEE (in option classes in which a DPM has been appointed) (6)(16): Unchanged.

3. FLOOR BROKERAGE FEE (1)(5)(16): Unchanged.

4. RAES ACCESS FEE (RETAIL AUTOMATIC EXECUTION SYSTEM) (1)(4)(16): Unchanged.

* * * * *

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 summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to amend certain fees for DIA options. Specifically, the Exchange proposes to reduce customer and broker-dealer fees for transactions in DIA options, amend non-member market-maker fees for orders in DIA options sent to CBOE through Linkage and outside of Linkage,[8] and eliminate the market-maker license fee surcharge applicable to transactions in DIA options.

In particular, the transaction fees for public customer transactions in DIA options are currently $.45 per contract if the premium is equal to or greater than $1, and $.25 per contract if the premium is less than $1. The Exchange proposes to reduce the transaction fees for public customer transactions in DIA options to $.15 per contract, regardless of the premium. Moreover, the transaction fees for broker-dealer transactions in DIA options are currently $.45 per contract if the premium is equal to or greater than $1, and $.25 per contract if the premium is less than $1. The Exchange proposes to reduce the transaction fees for broker-dealer transactions in DIA options to $.25 per contract, regardless of the premium. Further, the transaction fees for non-member market-maker transactions in DIA options are currently $.47 per contract if the premium is greater than or equal to $1, and $.27 per contract if the premium is less than $1. The transaction fees assessed to non-member market-makers for orders in DIA options sent to CBOE through Linkage are currently $.45 per contract if the premium is greater than or equal to $1, and $.25 per contract if the premium is less than $1. The Exchange proposes to change both the non-member market maker transaction fee and the Linkage transaction fee for transactions in DIA options to $.26 per contract, regardless of the premium.[9]

In addition, the Exchange currently charges market-makers that trade Dow Jones products, including DIA options, a license fee of $.10 per contract in addition to the regular transaction fee of $.24 per contract, to assist the Exchange in offsetting some of the royalty fees the Exchange must pay to Dow Jones for its license to trade Dow Jones products.[10] The Exchange proposes to eliminate the $.10 license fee solely with respect to market-maker transactions in DIA options.[11]

The proposed rule change, as amended, is intended to establish fees for CBOE's DIA options that will be competitive with fees charged by other exchanges for transactions in DIA options.

The Exchange also proposes to make a minor technical amendment to its Fees Schedule to change references relating to ''Reduced Value Russell 2000'' options to its ticker symbol, ''RMN.''

2. Statutory Basis

The CBOE believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[12] in general, and furthers the objectives of section 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 members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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.[16] At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[17]

---

[8] *See* Amendment No. 2, *supra* note 4.

[9] *See* Amendment No. 2, *supra* note 4. According to CBOE, the proposed changes to the transaction fees assessed to non-member market-makers for orders in DIA options sent to CBOE through Linkage or outside of Linkage will be implemented on November 1, 2005.

[10] *See* Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978, 44979 (July 31, 2003).

[11] The Commission notes that the Exchange currently charges market-makers that trade Dow Jones products, including DIA options, a total fee of $.34 per contract, which reflects a $.10 licensing fee surcharge. Under the proposed rule change, the fee for market-makers that trade DIA options will be $.24 per contract.

[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] *See supra* note 7.

[17] *Id.*

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–2005–71 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–2005–71. 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, as amended, 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 submissions should refer to File Number SR–CBOE–2005–71 and should be submitted on or before November 16, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5945 Filed 10–25–05; 8:45 am]

BILLING CODE 8010–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52631; File No. SR–FICC–2005–14]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Federal Reserve's National Settlement System

October 18, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 9, 2005, Fixed Income Clearing Corporation (''FICC'') 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 primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the rules of FICC's Government Securities Division (''GSD'') to have funds-only settlement obligation payment processing occur through the Federal Reserve's National Settlement System (''NSS'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the rules of GSD to require netting members to satisfy their funds-only settlement amounts ultimately through the Federal Reserve's NSS.[3] GSD's funds-only settlement process is set forth in GSD Rule 13. On a daily basis, FICC reports a funds-only settlement amount, which is either a debit amount or a credit amount, to each netting member. Each netting member that has a debit is required to satisfy its obligation by the applicable deadline. Netting members with credits are subsequently paid by FICC by the applicable deadline. All payments of funds-only settlement amounts by a netting member to FICC and all collections of funds-only settlement amounts by a netting member from FICC are done through depository institutions that are designated by such netting member and FICC to act on their behalves with regard to such payments and collections. All payments are made by fund wires from one depository institution to the other.

In 1997, the Commission approved an enhancement to GSCC's[4] funds-only settlement payment processing (''1997 Filing'').[5] This enhancement gave members the option to participate in an auto-debit arrangement that was to eliminate the need to send fund wires for the satisfaction of funds-only settlement payments. Under the auto-deposit arrangement, GSCC, the netting member, and the netting member's depository institution would enter into a ''funds-only settlement procedures agreement'' whereby the depository institution would pay or collect funds-only settlement amounts on behalf of the netting member and GSCC through accounts of the member at the depository institution. As a result, the

[3] This is consistent with the manner in which FICC's affiliates, The Depository Trust Company (''DTC'') and the National Securities Clearing Corporation (''NSCC''), handle their funds settlement process. DTC and NSCC do not currently use NSS for the processing of funds credits, whereas FICC is proposing to have the GSD process both the debits and credits of its funds-only settlement process through NSS.

[4] The Government Securities Clearing Corporation (''GSCC'') was the predecessor to GSD. GSCC became the GSD division of FICC when GSCC and the Mortgage Backed Securities Clearing Corporation were merged to create FICC in 2002.

[5] Securities Exchange Act Release No. 39309 (November 7, 1997), 62 FR 61158 (November 14, 1997) [File No. SR–GSCC–97–06].

need for fund wire payments would be eliminated.[6]

The proposed rule change will replace the auto-debit process of the 1997 Filing and will provide even further enhancements to the current approach to payment processing than was envisioned by the 1997 Filing. Under the proposed rule change, the required payment mechanism for the satisfaction of funds-only settlement amounts will be the NSS. FICC will appoint The Depository Trust Company (''DTC'') as its settlement agent for purposes of interfacing with the NSS.[7]

In order to satisfy their funds-only settlement obligations through the NSS process, netting members must appoint banks or trust companies to act as their ''funds-only settling banks.'' A netting member that qualifies may act as its own funds-only settling bank.

The GSD will establish a limited membership category for the funds-only settling banks. Banks or trust companies that are DTC settling banks, as defined in DTC's rules and procedures, or that are GSD netting members with direct access to the Federal Reserve and the NSS will be eligible to become GSD funds-only settling bank members by executing the requisite membership agreement for this purpose. Other banks or trust companies that desire to become funds-only settling bank members must apply to FICC. They must also have direct access to a Federal Reserve Bank and the NSS as well as satisfy the financial responsibility standards imposed by FICC from time to time. Initially, these applicants must meet and maintain a Tier 1 capital ratio of 6 percent.[8]

In addition to the membership agreement, the funds-only settling bank and the netting member must execute an agreement whereby the member will appoint the bank to act on its behalf for funds-only settlement purposes. The bank must also execute any agreements required by the Federal Reserve Bank for participation in the NSS for FICC's funds-only settlement process.

The funds-only settling banks will be required to follow the procedures for funds-only settlement payment processing set forth in FICC's proposed new rules. This will include, for example, providing FICC or its settlement agent with the requisite acknowledgement of the bank's intention to settle the funds-only settlement amounts of the netting members it represents on a timely basis and participating in the NSS process. Funds-only settling banks will have the right to refuse to settle for a particular netting member and will also be able to opt out of NSS for one business day if they are experiencing extenuating circumstances.[9] Under FICC's proposal, the netting member shall be responsible for ensuring that its funds-only debit is wired to the depository institution designated by FICC for this purpose by the payment deadline. The proposed rule change makes clear that the obligation of a netting member to fulfill its funds-only settlement amount remains at all times with the netting member.

As FICC's settlement agent, DTC will submit instructions to have the Federal Reserve Bank accounts of the funds-only settlement banks charged for the debit amounts and credited for the credit amounts. Utilization of NSS will eliminate the need for the initiation of wire transfers in satisfaction of funds-only settlement amounts, and FICC believes that it will therefore reduce the risk that the netting member that designated the bank may incur a late payment fine due to delay in wiring funds. The proposal will also reduce operational burden for the operations staff of FICC.

The NSS is governed by the Federal Reserve's Operating Circular No. 12 (''Circular''). Under the Circular, DTC, as FICC's settlement agent, has certain responsibilities with respect to an indemnity claim made by a relevant Federal Reserve Bank as a result of the NSS process. FICC will apportion the entirety of any such liability to the netting members for whom the funds-only settling bank to which the indemnity claim relates was acting. This allocation will be done in proportion to the amount of such members' funds-only settlement amounts on the business day in question. If for any reason such allocation is not sufficient to fully satisfy the Federal Reserve Bank's indemnity claim, the remaining loss shall be treated as an ''Other Loss'' as defined by the GSD's Rule 4 and allocated accordingly.

The proposed rule change will not change the current GSD deadlines regarding the payment and receipt of funds-only settlement amounts, which are set forth in the GSD's rules.

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act, and the rules and regulations thereunder because it will enhance the current operation of the GSD's funds-only settlement payment process by promoting the timely processing of funds payments and credits. As such, the proposed rule change should support the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–FICC–2005–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary,

[6] This was a voluntary arrangement that was never implemented because until recently GSCC and then GSD continued to make manual adjustments to the final funds-only settlement amounts of netting members. These manual adjustments have recently largely been eliminated.

[7] DTC currently performs this service for NSCC.

[8] This is the same financial requirement for NSCC settling bank-only members. Under FICC's proposal, FICC would retain the discretion to change this financial criterion by providing advanced notice to the fund-only settling banks and the netting members through important notice.

[9] These procedures are consistent with the NSCC and DTC procedures in this respect.

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–FICC–2005–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2005–14 and should be submitted on or before November 16, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5943 Filed 10–25–05; 8:45 am]

BILLING CODE 8010–01–P

[10] CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52637; File No. SR–NASD–2004–026]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Amendments No. 3 and 4 to Proposed Rule Change To Amend NASD Rule 2320(a) Governing Best Execution

October 19, 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 June 22 and September 22, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') Amendments No. 3 and 4 to the proposed rule change as described in Items I, II, and III below which Items have substantially been prepared by the NASD. The proposed rule change, incorporating Amendments No. 1 and 2, was published for comment in the **Federal Register** on February 25, 2005.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended by Amendments No. 3 and 4 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In response to comments on the original proposal, NASD is proposing additional amendments to Rule 2320(a) (''Best Execution Rule''). Below is the text of the proposed rule change marked to show changes from the text that was published previously.[4] Proposed deletions are in brackets. The discussion section of this notice focuses on the changes made in Amendments No. 3 and 4. For an explanation of the original filing, see the release cited in footnote 3.

2300. TRANSACTIONS WITH CUSTOMERS

2320. Best Execution and Interpositioning

(a) In any transaction for or with a customer or a customer of another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best market [center] for the subject security and buy or sell in such market [center] so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Among the factors that will be considered in determining whether a member has used ''reasonable diligence'' are:

(1) The character of the market for the security, *e.g.*, price, volatility, relative liquidity, and pressure on available communications;

(2) The size and type of transaction;

(3) The number of markets checked;

(4) Accessibility of the quotation; and

(5) The terms and conditions of the order which result in the transaction, as communicated to the member and persons associated with the member.

(b) through (g) No change.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51229 (Feb. 18, 2005), 70 FR 9416.

[4] *Id.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Best Execution Rule currently requires a member, in any transaction for or with a customer, to use reasonable diligence to ascertain the best inter-dealer market for a security and to buy or sell in such a market so that the price to the customer is as favorable as possible under the prevailing market conditions. NASD has received a number of questions regarding the application of the term ''customer,'' in the context of best execution. NASD Rule 0120(g) defines ''customer'' to exclude a broker or dealer, unless the context otherwise requires. For example, if a firm that receives an order from a customer (''originating broker-dealer'') routes the order to a member firm (''recipient member'') and the recipient member executes the order in a manner inconsistent with the Best Execution Rule, the recipient member could argue that it has not violated the Best Execution Rule because the transaction was not ''for or with a customer,'' but rather for or with a broker-dealer.

NASD believes that not applying the Best Execution Rule to recipient members is contrary to both the interests of the investing public and the general intent of the Best Execution Rule.

Proposal

NASD filed Amendments No. 3 and 4 in response to the commenters' concerns about how the proposed rule change would apply to the debt markets

and in instances where another broker-dealer is simply executing a customer order against a member's quote. Amendment No. 3 deletes proposed references to market centers and instead uses the term ''market.'' NASD is making this change in response to comments that suggest that the term ''market center'' would: (1) Create an unfair competitive disparity in the equity market; and (2) create confusion and problems of interpretation, application, and enforcement in the debt market. While the term ''market'' has been in the text of NASD Rule 2320 since its adoption, it is an undefined term. Accordingly, NASD is providing interpretive guidance that states that, for purposes of NASD Rule 2320, the term ''market'' or ''markets'' should be interpreted broadly to include a variety of different venues, including, but not limited to, market centers that are trading a particular security. Such an expansive interpretation is for the purposes of both informing broker-dealers as to the scope of venues that must be considered in the furtherance of their best execution obligations and promoting fair competition among broker-dealers, exchange markets, and markets other than exchange markets, as well as any other venue that may emerge, by not mandating that certain trading venues have less relevance than others in the course of best execution.

In Amendment No. 3, NASD also is providing interpretive guidance concerning how the Best Execution Rule should be applied in the debt market with respect to one of the factors used to determine if a member has used reasonable diligence: Accessibility of the quotation. When quotations are available, such as for certain liquid debt securities, NASD will consider the ''accessibility of such quotations'' when examining whether a member has used reasonable diligence. For purposes of debt, the term ''quotation'' refers to either dollar (or other currency) pricing or yield pricing.[5]

Amendment No. 4 clarified that a member's duty to provide best execution in any transaction ''for or with a customer of another broker-dealer'' does not apply in instances when another broker-dealer is simply executing a customer order against the member's quote. Stated in another manner, the duty to provide best execution to customer orders received from other broker-dealers arises only when an order is routed from the broker-dealer to the member for the purpose of order handling and execution. This clarification is intended to draw a distinction between those situations in which the member is acting solely as the buyer or seller in connection with orders presented by a broker-dealer against the member's quote, as opposed to those circumstances in which the member is accepting order flow from another broker-dealer for the purpose of facilitating the handling and execution of such orders.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] in general, and with Section 15A(b)(6) of the Act,[7] in particular, which requires that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The obligation of a member firm to provide best execution to its customers has long been an important investor protection rule, characteristic of fair and orderly markets and a central focus of NASD's examination, customer complaint, and automated surveillance programs. NASD believes that the proposed rule change will expand customer protection under the Best Execution Rule, provide better clarity to members, and enhance NASD's ability to pursue actions for failure to provide best execution.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On February 25, 2005, the SEC published SR–NASD–2004–026 for comment in the **Federal Register**.[8] The SEC received three comment letters in response to the publication of the rule proposal in the **Federal Register**.[9] On June 22, 2005, the NASD responded to the comments.[10] BMA responded to the NASD's response.[11]

The BMA submitted a comment letter stating, among other things, its belief that NASD only considered equities trading when drafting the proposed rule change.[12] Specifically, BMA states that NASD's proposed change of terminology in an attempt to clarify and modernize the Best Execution Rule exemplifies how the rule change was drafted to address equities trading only and states further that changing ''inter-dealer'' markets to ''market centers'' has no meaning in the context of the bond market. BMA believes the proposal is inappropriate for fixed income securities and, if adopted, would exacerbate existing difficulties with regard to bond trading. In addition, BMA believes applying the Best Execution Rule, as amended, is impractical, unfair, anti-competitive, unworkable in the case of the bond market, and inconsistent with a customer's reasonable expectations of how its orders will be handled.

NASD appreciates the comments of BMA but does not find them to be persuasive. Essentially, BMA is advocating, for a number of reasons, that the Best Execution Rule is not applicable to the debt market. However, the terms of NASD Rule 2320 have never been limited to equity securities and the consistency of this observation is expressed in NASD Rule 0116 in which the Best Execution Rule, among others, is made applicable to transactions and business activities relating to exempted securities (other than municipal securities) conducted by members and associated persons.[13]

[5] NASD notes, however, that accessibility is only one of the non-exhaustive reasonable diligence factors set out in NASD Rule 2320. In the absence of accessibility, members are not relieved from taking reasonable steps and employing their market expertise in achieving the best execution of customer orders.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] *See* footnote 3, supra.

[9] *See* letters from Amal Aly, Vice President and Associate General Counsel, and Ann Vlcek, Vice President and Associate General Counsel, Securities Industry Association (''SIA'') dated March 18, 2005 (''SIA Letter''); Paul A. Merolla, Executive Vice President and General Counsel, Instinet Group, Inc. (''Instinet'') dated March 22, 2005 (''Instinet Letter''); Michele C. David, Vice President and Assistant General Counsel, The Bond Market Association (''BMA'') dated April 5, 2005 (''BMA Letter''); all of which were addressed to Jonathan G. Katz, Secretary, Commission.

[10] *See* Amendment No. 3.

[11] *See* letter from Marjorie Gross, Senior Vice President and Regulatory Counsel, BMA to Jonathan G. Katz, Secretary Commission, dated September 6, 2005 (''BMA Letter 2'').

[12] NASD did not intend to only consider equity trading when drafting this proposal. In this rule proposal, NASD is again clarifying that the Best Execution Rule is applicable to the debt market, and is providing additional interpretive guidance. Specifically, NASD is providing interpretive guidance with respect to the ''accessibility of the quotations'' reasonable diligence factor and the application of this factor in the debt market. When quotations are available, such as for certain liquid debt securities, NASD will consider the ''accessibility of such quotations'' when examining whether a member has used due diligence. In such instances, the term ''quotation'' refers to either dollar (or other currency) pricing or yield pricing.

[13] *See* Securities Exchange Act Release No. 44631 (July 31, 2001), 66 FR 41283 (August 7, 2001) (Approval of SR–NASD–2000–38).

Further, BMA asserts that the term ''market center'' is an equity term and cannot be applied in the context of debt. The NASD acknowledges that the term ''market center'' has traditionally been used in connection with certain equity securities. For example, Rule 600(b)(38) under the Act,[14] which is applicable to national market system securities, defined ''market center'' as any exchange market maker, over-the-counter (OTC) market maker, alternative trading system, national securities exchange, or national securities association. In seeking to modernize the Best Execution Rule, NASD sought a recognized term that was aimed broadly at capturing order execution venues. However, in response to comments, including BMA's concerns that use of this term may introduce confusion in the debt market; NASD has determined to amend the Best Execution Rule to instead use the term ''market.'' It should be noted, as discussed above, that the term ''market'' or ''markets'' for purposes of NASD Rule 2320, should be interpreted broadly to include a variety of different venues, including but not limited to market centers that are trading a particular security. Such an expansive interpretation is for the purposes of both informing broker-dealers as to the scope of venues that must be considered in the furtherance of their best execution obligations and promoting fair competition among broker-dealers, exchange markets, and markets other than exchange markets, as well as any other venue that may emerge; it is not NASD's intention to mandate that certain trading venues have less relevance than others in the course of best execution.

BMA also believes imposing a best execution obligation on a ''downstream'' chain of dealers is impractical, unfair, anti-competitive, and unworkable in the case of the bond market. BMA argues that such an obligation should not be imposed on recipient broker-dealers because there is no pre-trade quote transparency, no mandatory firm quote obligation, and no uniform, regulated inter-market and inter-dealer linkage.[15] BMA fails to recognize that the Best Execution Rule has been in place since 1968. It was adopted at a time when the market structure of the OTC market was quite different. There was significantly less market transparency. Trading decisions and pricing information were based upon telephone and wire quotations as well as quotations in the National Quotation Bureau sheet. At that time, in response to a recommendation made in Chapter VII of the Report of Special Study of Securities Markets of the Securities and Exchange Commission,[16] NASD had recently adopted a policy with respect to firmness of quotations. Furthermore, no uniform, regulated inter-market, inter-dealer linkage existed. The fact is that the Best Execution Rule has been in force since the time when the OTC equity market more closely resembled the current fixed income market.

The principles embodied in the Best Execution Rule have evolved over time with changes in technology and the structure of the financial markets.[17] This evolution arises because the standard in the Best Execution Rule is one of ''reasonable diligence'' that is assessed by examining specific factors including ''the character of the market for the security.'' Accordingly, the determination as to whether a member has satisfied its best execution obligations necessarily involves a ''facts and circumstances'' analysis. In sum, in its refutation of the best execution obligation in the context of the debt markets, BMA is incorrect as a matter of law and regulation. Moreover, BMA's policy attack on this important investor protection safeguard is fatally undermined by the elasticity of NASD Rule 2320 in its recognition that the character of the market will be among the reasonable diligence factors in the execution of the obligation.

BMA posits that extending best execution obligations to customers of another broker-dealer is inconsistent with a customer's reasonable expectations of how its orders will be handled because the customer would not have the same expectations of the chain of ''unknown'' intermediary firms involved in its transactions. NASD strongly disagrees with BMA.[18] BMA's assertion that customers' expectations would somehow be different when an ''unknown'' intermediary is involved is inconsistent with the generally recognized principle that customers generally seek their own economic gain and that broker-dealers have a corresponding duty to use reasonable efforts to maximize the economic benefits for their customers.[19] There is nothing in the case law that suggests that a broker-dealer's determination to use an unrelated intermediary should relieve its duties in this regard. NASD strongly believes that customers are entitled to receive equivalent best execution protections without regard to whether their order is executed by the originating broker-dealer or routed to or through another broker-dealer for execution.

The SIA and Instinet submitted comment letters that, taken together, promote the view that a recipient broker-dealer's compliance with the terms and conditions of the order, as communicated by the originating broker-dealer, solely, should constitute satisfaction of its best execution obligation with regard to such routed orders. SIA and Instinet assert that this is appropriate because the recipient broker-dealer is not in the same position as the routing firm to weigh the relative

[14] 17 CFR 242.600(b)(38).

[15] BMA notes in its comment letter that the fixed income market is, in fact, not a single market, but in effect, several different markets ranging from the U.S. Treasury market, where dealer quotations may be very representative of market prices and quotations on trading systems may be executable, to the corporate bond market, where large and active issuers may be actively quoted and where screens may provide good transparency for certain securities of active issuers (but not for other securities or issuers), to the market for distressed and emerging market paper and derivative instruments, such as structured notes, where there may be limited trading, quoting or transparency. Notwithstanding these observations, they do not obviate the application of the Best Execution Rule in wholesale fashion. As discussed subsequently in the text, NASD's Best Execution Rule looks at a number of factors, including the character of the market for the security, to determine whether a member or associated person(s) has used reasonable diligence. Accordingly, it can be applied in a variety of different markets that can possess divergent characteristics, including the U.S. debt market.

[16] *See* Report of Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess., pt. II, 674 (1963).

[17] The SEC has expressly recognized the evolving nature of the best execution obligations of broker-dealers. *See, e.g.*, Final Rules, 61 FR at 48322–23 (''The scope of this duty of best execution must evolve as changes occur in the market that give rise to improved executions for customer orders, including opportunities to trade more advantageous prices. As these changes occur, broker-dealers' procedures for seeking to obtain best execution for customer orders also must be modified to consider price opportunities that become 'reasonably available.' ''). Accordingly, the principles embodied in the text of the Best Execution Rule are applicable to a variety of different market structures and evolve as the market structure for a particular type of security evolves.

[18] It has been NASD's consistent position since at least 1963 that ''the integrity of the industry can be maintained only if the fundamental principle that a customer should at all times get the best available price which can reasonably be obtained for him is followed.'' *See,* Report of Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess., pt. II, 624 (1963).

[19] *See, e.g., Newton* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 135 F.3d 266, 270 (3d Cir. 1998) (en banc) (citation omitted), cert. denied sub nom., *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Kravitz,* 525 U.S. 811 (1998). The Court, in the context of an agency relationship, recognized that customers seek their own economic gain. Specifically, the Court stated that ''* * * the client-principal seeks his own economic gain and the purpose of the agency is to help the client-principal achieve that objective, the broker-dealer, absent instructions to the contrary, is expected to use reasonable efforts to maximize the economic benefit to the client in each transaction.''

importance of various factors related to each customer, as it usually has no knowledge of the actual customer.

NASD disagrees with the arguments of SIA and Instinet. The recipient member is certainly entitled to rely on the routing member to understand the terms of the order absent any other direct contact with the customer; with that allowance noted, the recipient member is not at any further disadvantage in complying with the terms of Rule NASD 2320, and, consequently, investor protection requires that recipient members must be subject to all of the relevant reasonable diligence factors in determining whether best execution has occurred as a matter of fact and circumstance.

Instinet also asserted that the proposal would create an unfair competitive disparity between otherwise similarly situated market centers that execute orders on an electronic agency basis because the proposed rule would not apply to market centers operated by NASD and other self-regulatory organizations (''SROs''). Instinet requests that NASD revise the proposal to exclude member-operated Electronic Communication Networks and Alternative Trading Systems that interact with orders on a fully automated basis, or else apply the same obligations under the proposal to the market centers operated by NASD and other SROs.[20] As noted above, NASD has responded to this comment, as well as BMA's, by deleting proposed references to market centers and simply using the term ''market.'' For purposes of NASD Rule 2320, this term should be interpreted broadly to include a variety of different venues, including, but not limited to, market centers that are trading a particular security. Finally, in response to the commenters' concerns, in Amendment No. 4, NASD clarified that a member's duty to provide best execution to customer orders received from other broker-dealers ''arises only when an order is routed from the broker-dealer to the member for the purpose of order handling and execution'' and does not arise when another broker-dealer is simply executing against a member's quote.

[20] Instinet also claims that, in light of Regulation NMS' effects on interaction among market centers and the potential conflicts and interpretive issues, NASD's proposal could be interpreted to require a market center (the recipient broker-dealer) to consider routing an order to another market center displaying a better price even though the originating broker-dealer already has indicated that it has attempted to access such interest. NASD's Best Execution Rule contains a number of factors that are examined to determine whether a member or associated person has used reasonable diligence, including ''accessibility of the quotation.'' Accordingly, the facts and circumstances surrounding the ''accessibility of the quotations'' would be considered to the extent they are appropriate.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2004–026. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–026 and should be submitted on or before November 16, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5922 Filed 10–25–05; 8:45 am]

BILLING CODE 8010–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52645; File No. SR–NASD–2005–116]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Modify Nasdaq's Auditor Peer Review Requirement

October 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 29, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify NASD Rule 4350(k) to reflect changes to the oversight of auditors mandated by the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'')[3] and to make a conforming amendment to NASD Rule 4200(a). Nasdaq will implement the proposed rule immediately upon

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4

[3] Pub. L. 107–204, 116 Stat. 745 (2002).

Commission approval. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

4200. Definitions

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1) No change.

(2) *Reserved*. [''AICPA'' means the American Institute of Certified Public Accountants.]

(3)–(38) No change.

(b) No change.

* * * * *

4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except for Limited Partnerships

(a)–(j) No change.

(k) [Peer Review] *Auditor Registration*

[(1)] Each *listed* issuer must be audited by an independent accountant that[:] *Is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7212]*.

[(A) has received an external quality control review by an independent public accountant (''peer review'') that determines whether the auditor's system of quality control is in place and operating effectively and whether established policies and procedures and applicable auditing standards are being followed; or]

[(B) is enrolled in a peer review program and within 18 months receives a peer review that meets acceptable guidelines.]

[(2) The following guidelines are acceptable for purposes of this paragraph:]

[(A) The peer review should be comparable to AICPA standards included in Standards for Performing on Peer Reviews, codified in the AICPA's SEC Practice Section Reference Manual;]

[(B) The peer review program should be subject to oversight by an independent body comparable to the organizational structure of the Public Oversight Board as codified in the AICPA's SEC Practice Section Reference Manual; and]

[(C) The administering entity and the independent oversight body of the peer review program must, as part of their rules of procedure, require the retention of the peer review working papers for 90 days after acceptance of the peer review report and allow Nasdaq access to those working papers.]

(l)–(n) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 4350(k) currently requires that issuers be audited by an independent public accountant that has received an external quality control review by another independent public accountant (a ''peer review'') or is enrolled in a peer review program. However, as part of the Sarbanes-Oxley Act, Congress created the Public Company Accounting Oversight Board (the ''PCAOB'') and prohibited accounting firms that are not registered with the PCAOB from preparing or issuing audit reports on U.S. public companies and from participating in such audits.[4] The Sarbanes-Oxley Act also requires the PCAOB to conduct a continuing program of inspections of registered public accounting firms.[5] Pursuant to these requirements, the PCAOB is required to conduct inspections annually for firms that provide audit reports for more than 100 issuers and at least triennially for firms that provide audit reports for fewer issuers.[6]

In light of these new requirements, the American Institute of Certified Public Accountants (''AICPA'') has modified its peer review program. The new AICPA peer review program, which succeeds the SEC Practice Section Peer Review Program currently referred to in NASD Rule 4350(k), is designed to review and evaluate only the non-SEC issuer practice of the firm.[7] As a result, this peer review program is no longer relevant with respect to the audits of Nasdaq-listed issuers.

Given these changes to the oversight and inspection of auditors, the proposed rule change is designed to modify existing NASD Rule 4350(k) to reflect the new role of the PCAOB and change the existing requirement to a requirement that each issuer's auditor be registered as a public accounting firm with the PCAOB. As a result, auditors of Nasdaq companies will be subject to the PCAOB's program of continuing inspections.[8]

Under the proposed rule change, an issuer seeking to list on Nasdaq would be permitted to continue to use historical financial statements that were audited by a non-registered firm at a time when the applicant was not a public company. Nasdaq believes that this view is consistent with an interpretation adopted by the PCAOB, which provides that an auditor does not have to register with the PCAOB merely because it issues a consent to include an audit report for a prior period, if the auditor does not have or expect to have an ongoing role in the auditing engagement.[9] Of course, if the issuer was a public company immediately prior to listing on Nasdaq, the company's financial statements must have been audited and/or reviewed by a public accounting firm that was registered with the PCAOB, as required by the Sarbanes-Oxley Act and the rules of the PCAOB.

Finally, Nasdaq proposes to make a conforming amendment to the language of NASD Rule 4200(a) to delete the definition of ''AICPA,'' which would no longer be necessary.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[10] in general, and with Section 15A(b)(6) of the Act,[11] in particular, in that the proposal is designed to remove impediments to a free and open market and a national market system, prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will remove a redundant listing requirement, thereby removing an impediment to a free and open market,

[4] Section 102 of the Sarbanes-Oxley Act, 15 U.S.C. 7212.

[5] Section 104 of the Sarbanes-Oxley Act, 15 U.S.C. 7214.

[6] *See* Section 104 of the Sarbanes-Oxley Act, 15 U.S.C. 7214(b).

[7] *See* Web site for the AICPA's Center for Public Company Audit Firms Peer Review Program at: *http://www.aicpa.org/centerprp/index.htm.*

[8] *See* Sections 4000–4012 of the PCAOB Rules. Note that in the case of non-U.S. auditors, where the PCAOB determines it appropriate, the PCAOB may rely instead on non-U.S. inspections. *See* Section 4012 of the PCAOB Rules.

[9] *See* PCAOB Rule 2100, Note 2.

[10] 15 U.S.C. 78o–3.

[11] 15 U.S.C. 78o–3(b)(6).

and will align Nasdaq's listing standards with the requirements of the Sarbanes-Oxley Act, thereby allowing Nasdaq to further the investor protection goals of that Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–116 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–116. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–116 and should be submitted on or before November 16, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5942 Filed 10–25–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52638; File No. SR–NYSE–2005–37]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to Certain Sections of the Exchange Constitution Concerning the Exchange's Hearing Board and Related Amendments to Exchange Rule 475 and Rule 476

October 19, 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 May 23, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On September 9, 2005, NYSE amended the proposed rule change (''Amendment No. 1'').[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Article IX of the Exchange's Constitution and NYSE Rules 475 and 476 to modify certain aspects of the Exchange's disciplinary procedures and to provide a structure for a summary suspension hearing and a ''call-up'' procedure for review by members of the Board of Directors (''Board''), certain members of the Board of Executives listed in NYSE Rule 476(f), any member of the Regulation, Enforcement and Listing Standards Committee and either the Division of the Exchange that initiated the proceedings or the respondent. The text of the proposed rule change, as amended, is below. Proposed new language is in italics; proposed deletions are in brackets.[4]

* * * * *

Disciplinary Rules (Rules 475—477)

Rule 475. Prohibition or Limitation with Respect to Access to Services Offered by the Exchange or a Member or Member Organization—Summary Proceedings

(a) Except as provided [is] *in* subsection (b) of this Rule, the Exchange shall not prohibit or limit any person with respect to access to services offered by the Exchange or any member or member organization thereof unless the Exchange shall have notified such person in writing of, and shall have given such person, upon not less than 15 days prior written notice, an opportunity to be heard upon, the specific grounds for such prohibition or limitation. The Exchange shall keep a record of any proceeding pursuant to this Rule. Any determination by the Exchange to prohibit or limit any person with respect to access to services offered by the Exchange or a member or member organization thereof shall be supported by a statement setting forth

[3] *See* Amendment No.1 filed on September 9, 2005. In Amendment No. 1, the Exchange made technical corrections to proposed rule text contained in Exhibit 5 of the original filing.

[4] The rule as set forth herein reflects several minor revisions to the proposal's rule text that the Exchange has committed to incorporate in an amendment to the filing. Telephone conversation between Peggy Kuo, Chief Hearing Officer, NYSE and Cyndi N. Rodriquez, Special Counsel, Division of Market Regulations (''Division''), Commission on September 29, 2005.

the specific grounds on which the prohibition or limitation is based.

(b) The Exchange may summarily—

(i) suspend a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization who has been and is expelled or suspended from any other self-regulatory organization, as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, or barred or suspended from being associated with a member or any such self-regulatory organization provided, however, that any such summary suspension imposed by the Exchange shall not exceed the termination of the suspension imposed by such other self-regulatory organization on such member, member organization, allied member, approved person, or registered or non-registered employee;

(ii) suspend a member or member organization who is in such financial or operating difficulty that the Exchange determines and so notifies the Securities and Exchange Commission that the member or member organization cannot be permitted to continue to do business as a member or member organization with safety to investors, creditors, other members or member organizations, or the Exchange;

(iii) limit or prohibit any person with respect to access to services offered by the Exchange if subparagraph (i) or (ii) of this subsection is applicable to such person or, in the case of a person who is not a member or member organization, if the Exchange determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, member organizations, or the Exchange.

Any person aggrieved by any such summary action shall be notified in writing of, and shall be promptly afforded an opportunity to be heard by the Exchange upon, the specific grounds for such summary action. The Exchange shall keep a record of any proceeding pursuant to the Rule. Any determination by the Exchange with respect to such summary action shall be supported by a statement setting forth the specific grounds on which the summary action is based. The Commission, by order, may stay any such summary action in accordance with the provisions of the Securities Exchange Act of 1934.

(c) Hearings and proceedings pursuant to subsections (a) and (b) of this Rule shall be under the jurisdiction of a Hearing Officer, appointed by the Board, acting alone. The Hearing Officer shall schedule and conduct Hearings promptly and, in doing so, provide such discovery to the person whose access or suspension is the subject of the Hearing and to the Exchange officers and employees as provided for under Rule 476(c). The Hearing Officer shall render determinations based upon the record at such Hearings. No determinations by the Hearing Officer shall be effective to modify, reverse or terminate a summary action until and unless (i) ten days have elapsed after the determination has been rendered and (ii) during such ten days, no request for review has been filed with the Secretary of the Exchange pursuant to the next sentence. Any member of the Board, any member of the Board of Executives referred to in Rule 476(f), any member of the Regulation, Enforcement and Listing Standards Committee and either the Division of the Exchange initiating the proceedings or the respondent may require a review by the Board of any determination by the Hearing Officer by filing with the Secretary of the Exchange a written request therefor within ten days following such determination. The Board shall have power to affirm, modify or reverse any such determination, or remand the matter to the Hearing Officer for further proceedings.

[c](*d*) Whenever a member or member organization fails to perform his or its contracts, becomes insolvent, or is in such financial or operating difficulty that he or it cannot be permitted to continue to do business as a member or member organization with safety to investors, creditors, other members or member organizations, or the Exchange, such member or member organization shall promptly give written notice thereof to the Secretary of the Exchange.

[d](*e*) If the Board of Directors determines, after not less than ten days written notice to a member described in Section 1(a) of Article II who is suspended under the provisions of this Rule, that the protection of the persons entitled to make claim against the proceeds of the transfer of the membership of such member under Section 11 of Article II of the Constitution requires the transfer of the membership of such member, such membership may be disposed of by the Board of Directors. In any case, if a member suspended under the provisions of this Rule is not reinstated within one year from the time of his suspension, or within such further time as the Board of Directors may grant, his membership shall be disposed of by the Board of Directors; but the Board may, by the affirmative vote of a majority of the Directors then in office, extend the time for settlement for periods not exceeding one year each.

[e](*f*) Any person suspended under the provisions of this Rule shall, at the request of the Exchange, submit to the Exchange his or its books and records (including those books and records with respect to which such person has access or control) or the books and records of any employee thereof and furnish information to or to appear or testify before or cause any such employee to appear or testify before the Exchange.

[f](*g*) Any person suspended under the provisions of this Rule may, at any time, be reinstated by the Board of Directors.

[g](*h*) Any person suspended under the provisions of this Rule may be disciplined in accordance with the Rules of the Exchange for any offense committed by him or it either before or after his or its suspension in all respects as if he or it were not under such suspension.

[h](*i*) A member suspended under the provisions of this Rule shall be deprived during the term of his suspension of all rights and privileges of membership, but such suspension shall not operate to bar or affect the payments provided for by Article XV of the Constitution in the event of his death. Any suspension under the provisions of this Rule of a member or allied member shall create a vacancy in any office or position held by such member or allied member.

(j) The limitations on the Chief Executive Officer contained in Rule 476(l) shall apply to all matters under this Rule.

Rule 476. Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, Employees, or Others

(a) If a member, member organization, allied member, approved person, registered or non-registered employee of a member or member organization or person otherwise subject to the jurisdiction of the Exchange is adjudged guilty in a proceeding under this Rule of any of the following offenses—

[1.]*(1)* violating any provision of the Securities Exchange Act of 1934 or any rule or regulation thereunder;

[2.]*(2)* violating any of his or its agreements with the Exchange;

[3.]*(3)* violating any provision of the Constitution or any Rule adopted by the Board of Directors of the Exchange;

[4.]*(4)* making a material misstatement to the Exchange;

[5.]*(5)* fraud or fraudulent acts;

[6.]*(6)* conduct or proceeding inconsistent with just and equitable principles of trade;

[7.]*(7)* acts detrimental to the interest or welfare of the Exchange;

[8.]*(8)* making a fictitious bid, offer or transaction or giving an order for the purchase or sale of securities the execution of which would involve no change of beneficial ownership or executing such an order with knowledge of its character;

[9.]*(9)* making any purchases or sales or offers of purchase or sale of securities for the purpose of upsetting the equilibrium of the market or bringing about a condition in which prices will not fairly reflect market values, or assisting in making any such purchases or sales with knowledge of such purpose, or being, with such knowledge, a party to or assisting in carrying out any plan or scheme for the making of such purchases or sales or offers of purchase or sale;

[10.]*(10)* having made a misstatement or omission of fact on his or its application for membership or approval, or on any financial statement, report, or other submission filed with the Exchange; or

[11.]*(11)* refusing or failing to comply with a request of the Exchange to submit his or its books and records (including those books and records with respect to which such member, member organization, allied member, approved person, registered or non-registered employee or person otherwise subject to the jurisdiction of the Exchange has access and control) to the Exchange, any other self-regulatory organization, as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, any contract market, as referenced in Section 6(a) of the Commodities Exchange Act, any registered futures association, as referenced in Section 17 of the Commodities Exchange Act, or any foreign self-regulatory organization or association with which the Exchange has entered into an agreement or to furnish information to or to appear or testify before the Exchange or such other organization or association, as specified above, or failing to take any of the foregoing actions on the date or within the time period that the Exchange requires; or if a member who is registered as a specialist is adjudged guilty in a proceeding under this Rule of substantial or continued failure to engage in a course of dealings for his own account to assist in the maintenance, so far as practicable, of a fair and orderly market in any security in which he is registered; then, in any such event, the Hearing Panel *or, when authorized by this Rule, a Hearing Officer* shall, in accordance with the procedures set forth in this Rule, impose one or more of the following disciplinary sanctions on such member, member organization, allied member, approved person, registered or non-registered employee or person otherwise subject to the jurisdiction of the Exchange: expulsion; suspension; limitation as to activities, functions, and operations, including the suspension or cancellation of a registration in, or assignment of, one or more stocks; fine; censure; suspension or bar from being associated with any member or member organization; or any other fitting sanction. [In any proceeding under this Rule, any sanction imposed may be remitted or reduced by the Hearing Panel on such terms and conditions as it deems fair and equitable.]

(b) All proceedings under this Rule, except as to matters [referred to in paragraph (c),] *which are resolved by a Hearing Officer when authorized by this Rule*, shall be conducted at a Hearing in accordance with the provisions of this Rule and shall be held before a Hearing Panel consisting of at least three persons *of integrity and judgment:* a Hearing Officer, who shall [be Chairman of] *chair* the Panel, [with the remainder of the Panel being] *and at least two* members of the Hearing Board, *at least one of whom shall be engaged in securities activities differing from that of the respondent or, if retired, was so engaged in differing activities at the time of retirement. In any disciplinary proceeding involving activities on the Floor of the Exchange, no more than one of the persons serving on the Hearing Panel shall be, or if retired, shall have been, active on the Floor of the Exchange. A Hearing Panel can include only one retired person.*

The Chairman, subject to the approval of the Board [of Directors], shall from time to time appoint a Hearing Board to be composed of such number of members and allied members of the Exchange who are not members of the Board of [Directors] *Executives*, and registered employees and non-registered employees of members and member organizations, *and such other persons as set forth in the rules* as the Chairman shall deem necessary. *Former members, allied members, or registered and non-registered employees of members and member organizations who have retired from the securities industry can be appointed to the Hearing Board within five years of their retirement.* The members of the Hearing Board shall be appointed annually and shall serve at the pleasure of the Board [of Directors]. The Chairman, subject to the approval of the Board [of Directors], shall also designate [from among the officers and employees of the Exchange] a Chief Hearing Officer and one or more other Hearing Officers who shall have no Exchange duties or functions relating to the investigation or preparation of disciplinary matters and who shall be appointed annually and shall serve as Hearing Officers at the pleasure of the Board [of Directors]. *An individual cannot be a Hearing Officer (including the Chief Hearing Officer) if he or she is, or within the last three years was, a member, allied member, or registered or non-registered employee of a member or member organization.*

[In any hearing under this Rule involving as a respondent therein a member, member organization, allied member, or approved person, the members of the Hearing Board serving on the Panel shall be members or allied members and at least one of whom, to the extent reasonably possible, is engaged in similar activities as the respondent. In any such proceeding relating to activities on the Floor of the Exchange, at least one of the persons serving on the Panel shall be a member active on the Floor of the Exchange. In any such proceeding relating to any other activities, at least one of the persons serving on the Panel shall work in the office of a member or member organization which engages in a business involving substantial direct contact with securities customers.]

[In any hearing under this Rule involving as a respondent therein a registered or non-registered employee of a member or member organization who is not a member or allied member, the members of the Hearing Board serving on the Panel shall be registered employees or non-registered employees of members and member organizations who are not members or allied members and at least one of whom, to the extent reasonably possible, is engaged in similar activities as the respondent. In any such proceeding relating to such employee's activities on the Floor of the Exchange, at least one of the persons serving on the Panel shall be a registered or non-registered employee of a member or member organization active on the Floor of the Exchange who is not a member or allied member. In any such proceeding relating to any other activities at least one of the persons serving on the Panel shall work in the office of a member or member organization which engages in a business involving substantial direct contact with securities customers.]

[In any hearing under this Rule involving as joint respondents therein one or more members or member organizations, allied members or approved persons, together with one or more registered or non-registered employees of a member or member

organization who are not members or allied members, at least one of the persons serving on the Panel shall be a member or allied member and at least one other person serving on the Panel shall be a registered or non-registered employee of a member or member organization who is not a member or allied member, and the functional qualifications required of Hearing Panel members as stated above shall be satisfied.]

For all purposes of this Rule, the decision of a majority of the Panel shall be the decision of the Panel and shall be final and conclusive, unless a request to the Board [of Directors] for review is filed as provided in this Rule.

(c) Upon application to the Chief Hearing Officer [of the Exchange] by either party to a proceeding, the Chief Hearing Officer, or any Hearing Officer designated by the Chief Hearing Officer, shall resolve any and all procedural and evidentiary matters *and substantive legal motions*, and may require the Exchange to permit the respondent to inspect and copy documents or records in the possession of the Exchange which are material to the preparation of the defense or are intended for use by the [d]*D*ivision [or department] of the Exchange initiating the proceeding as evidence in chief at the [h]*H*earing. *The respondent may be required to provide discovery of non-privileged documents and records to the Exchange*. This provision does not authorize the discovery or inspection of reports, memoranda, or other internal Exchange documents prepared by the Exchange in connection with the proceeding. There shall be no interlocutory appeal to the Board [of Directors] of any determination as to which this provision applies.

(d) Except as provided in paragraph (g), in any proceeding under this Rule before a Hearing Panel, *or Hearing Officer as provided by this rule*, the specific charges against the respondent shall be in the form of a written statement (Charge Memorandum) and shall be signed by an authorized officer or employee of the Exchange on behalf of the [d]*D*ivision [or department] of the Exchange bringing the charges. A copy of such Charge Memorandum (including any exhibits attached thereto) shall be *filed with the Hearing Board at the same time it is* served upon the respondent. Service shall be deemed effective by personal service of such Charge Memorandum, or by leaving same either at the respondent's last known office address during business hours or respondent's last place of residence as reflected in Exchange records, or upon mailing same to the respondent at the aforesaid office address or place of residence. *The Hearing Board shall assume jurisdiction upon receipt of the Charge Memorandum*.

An Answer to the Charge Memorandum shall be filed not later than twenty five days from the date of service or within such longer period of time as the [Exchange] *Hearing Officer* may deem proper.

The Answer shall be in writing, signed by or on behalf of the respondent and filed with *the Hearing Board, with a copy served on* the [d]*D*ivision [or department] of the Exchange bringing the charges. The Answer shall indicate specifically which assertions of fact and charges in the Charge Memorandum are denied and which are admitted; and shall also contain any specific facts in contradiction of the charges and any affirmative defenses. A general denial without more shall not be deemed to satisfy this requirement. Any assertions of fact not specifically denied in the Answer may be deemed admitted and failure to file an Answer may be deemed an admission of any facts asserted in the Charge Memorandum.

The Hearing Board shall set a schedule for filing of motions and shall establish Hearing dates. If the respondent has failed to file an Answer, the Division of the Exchange bringing the charges, by motion, accompanied by proof of notice to the respondent, may request a determination of guilt by default, and may recommend a penalty to be imposed. If the respondent opposes the motion, the Hearing Officer, on a determination that respondent had adequate reason to fail to file an Answer, may adjourn the Hearing date and direct the respondent to promptly file an Answer. If the default motion is unopposed, or respondent did not have adequate reason to fail to file an Answer, or respondent failed to file an Answer after being given an opportunity to do so, the Hearing Officer, on a determination that respondent has had notice of the charges and that the Exchange has jurisdiction in the matter, may find guilt and determine penalty.

Notice of the [h]*H*earing to be held for the purpose of considering the charges shall be served upon the *Division of the Exchange and the* respondent as provided above[, who shall be]. *The respondent shall be* entitled to be personally present thereat if a natural person, and if other than a natural person, by a designee. The Hearing Officer shall determine the specific facts [put into] *in* issue [by the Charge Memorandum and the Answer], and with respect to those facts only, both the [d]*D*ivision [or department] of the Exchange bringing the charges and the respondent may produce witnesses and any other evidence and they may examine and cross-examine any witnesses so produced. [If the respondent has failed to file an Answer or if the facts and charges in the Charge Memorandum are not specifically denied, any witnesses or other evidence may be limited to the determination of the penalty to be imposed. In the event a respondent who has failed to file an Answer appears at the hearing, such respondent shall not be entitled to produce witnesses or other evidence or testify in defense of the facts or charges contained in the Charge Memorandum unless the Hearing Panel determines that such respondent had adequate reason to excuse his failure to file an Answer. Upon such determination by the Hearing Panel, the hearing may be adjourned and the respondent may be directed to promptly file a written Answer.] After hearing all the witnesses and considering all the evidence, the *Hearing* Panel shall determine whether the respondent is guilty of the charges. If the *Hearing* Panel determines that the respondent is guilty, it shall fix and impose the penalty or penalties.

(e) The Exchange shall keep a record of any [h]*H*earing conducted under this Rule and a written notice of the result setting forth the requirements contained in Section 6(d)(1) of the Securities Exchange Act of 1934 shall be served upon the respondent and the [d]*D*ivision [or department] of the Exchange which brought the charges.

The determination of the Hearing Panel, *or of the Hearing Officer on a determination of default*, and any penalty imposed, shall be final and conclusive twenty five days after notice thereof has been served upon the respondent in the manner provided in paragraph (d) above, unless a request to the Board [of Directors] for review of such determination and/or penalty is filed as hereinafter provided. If such a request to the Board [of Directors] for review is filed as hereinafter provided, any penalty imposed shall be stayed pending the outcome of such review.

(f) The Division [or department] of the Exchange which brought the charges, the respondent, [or] *and* any member of the Board, [of Directors or] *any member* of the Board of Executives [of the Exchange] *representing the groups referenced in clauses (ii) and (iii) of Article V, Section 2(b) of the Exchange Constitution, any member of the Board of Executives in such other categories as the Board, by rule, shall designate, and any member of the Regulation, Enforcement and Listing Standards Committee* may require a review by the Board of any determination or penalty,

or both, imposed by a Hearing Panel *or Hearing Officer*. A request for review shall be made by filing with the Secretary of the Exchange a written request therefore, which states the basis and reasons for such review, within twenty-five days after notice of the determination and/or penalty is served upon the respondent. The Secretary of the Exchange shall give notice of any such request for review to the [d]*D*ivision [or department] of the Exchange which brought the charges and any respondent affected thereby.

Any review by the Board [of Directors] shall be based on oral arguments and written briefs and shall be limited to consideration of the record before the Hearing Panel *or Hearing Officer*. Upon review, the Board [of Directors], by the affirmative vote of a majority of the Directors then in office, may sustain any determination or penalty imposed, or both, may modify or reverse any such determination, and may increase, decrease or eliminate any such penalty, or impose any penalty permitted under the provisions of this Rule, as it deems appropriate. Unless the Board [of Directors] otherwise specifically directs, the determination and penalty, if any, of the Board [of Directors] after review shall be final and conclusive subject to the provisions for review of the Securities Exchange Act of 1934.

Notwithstanding the foregoing, if either party upon review applies to the Board [of Directors] for leave to adduce additional evidence, and shows to the satisfaction of the Board [of Directors] that the additional evidence is material and that there was reasonable ground for failure to adduce it before the Hearing Panel *or Hearing Officer*, the Board [of Directors] may remand the case [to a Hearing Panel] for further proceedings, in whatever manner and on whatever conditions the Board [of Directors] considers appropriate.

(g) In lieu of the procedures set forth in paragraph (d) above, a Hearing [Panel] *Officer acting alone* [,at a hearing called for that purpose,] shall also determine whether a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization has committed any one or more of the offenses specified in paragraph (a) above, on the basis of a written Stipulation and Consent entered into between the respondent and any authorized officer or employee of the Exchange. Any such Stipulation and Consent shall contain a stipulation with respect to the facts, or the basis for findings of fact by the Hearing [Panel] *Officer*; a consent to findings of fact by the Hearing [Panel] *Officer*, including a finding that a specified offense had been committed; and a consent to the imposition of a specified penalty.

A Hearing Officer shall convene a Hearing Panel, if the Hearing Officer requires clarification or further information on the Stipulation and Consent, or if either party requests a Hearing before a Hearing Panel. A Hearing Officer, acting alone, may not reject a Stipulation or Consent, but shall convene a Hearing Panel to consider such action. Notice of any Hearing held for the purpose of considering a Stipulation and Consent shall be served upon the respondent as provided in paragraph (d) above. In any such [h]*H*earing, if the Hearing Panel determines that the respondent has committed an offense, it may impose the penalty agreed to in such Stipulation and Consent [or any penalty which is less severe than the stipulated penalty, as it deems appropriate]. In addition, a Hearing Panel may reject such Stipulation and Consent.

Such rejection shall not preclude the parties to the proceeding from entering into a modified Stipulation and Consent which shall be presented to a Hearing Panel in accordance with the provisions of this subsection, nor shall such rejection preclude the Exchange from bringing or presenting the same or different charges to a Hearing Panel in accordance with the provisions of paragraph (d) above. The Exchange shall keep a record of any Hearing conducted under this Rule and a written notice of the result setting forth the requirements contained in Section 6(d)(1) of the Securities Exchange Act of 1934 shall be served on the parties to the proceeding.

The determination of the Hearing Panel *or Hearing Officer* and any penalty imposed shall be final and conclusive, twenty five days after notice thereof has been served upon the respondent in the manner provided in paragraph (d) above, unless a request to the Board [of Directors] for review of such determination and/or penalty is filed as hereinafter provided. If such a request to the Board [of Directors] for review is filed as hereinafter provided, any penalty imposed shall be stayed pending the outcome of such review. Any member of the Board, [of Directors or of] the Board of Executives [of the Exchange] *specified in or designated pursuant to paragraph (f) above and any member of the Regulation, Enforcement & Listing Standards Committee* may require a review by the Board of any determination or penalty, or both, imposed by a Hearing Panel *or Hearing Officer* in connection with a Stipulation and Consent. [In addition, the division or department of the Exchange which entered into the written consent may require a review by the Board of Directors of any penalty which is less severe than the stipulated penalty.] The respondent or the [d]*D*ivision [or department] which entered into the written consent may require a review by the Board [of Directors] of any rejection of a Stipulation and Consent by the Hearing Panel.

A request for review shall be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within twenty-five days after notice of the determination and/or penalty is served on the respondent. The Secretary of the Exchange shall give notice of any such request for review to the [d]*D*ivision [or department] of the Exchange involved in the proceeding and any respondent affected thereby.

Any review by the Board [of Directors] shall consist of oral arguments and written briefs and shall be limited to consideration of the record before the Hearing Panel *or Hearing Officer*. Upon review, the Board [of Directors], by the affirmative vote of a majority of the Directors then in office, may fix and impose the penalty agreed to in such Stipulation and Consent or any penalty which is less severe than the stipulated penalty, or may remand for further proceedings. Unless the Board [of Directors] otherwise specifically directs, the determination and penalty, if any, of the Board [of Directors] after review shall be final and conclusive subject to the provisions for review of the Securities Exchange Act of 1934.

(h) A member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, or any other person shall have the right to be represented by legal counsel or other representative in any [h]*H*earing or review held pursuant to the provisions of this Rule and in any investigation before any committee, officer, or employee of the Exchange. *A Hearing Officer may impose a fine or any other appropriate sanction on any party or the party's representative for improper conduct in connection with a matter before the Hearing Board, and may, if appropriate, exclude any participant, including any party, witness, attorney or representative from a Hearing on the basis of such conduct.*

(i) A member or allied member of the Exchange who is associated with a member organization is liable to the same discipline and penalties for any act or omission of such member

organization as for his own personal act or omission. The Hearing Panel which considers the charges against such member or allied member or the Board [of Directors] upon any review thereof, may relieve him from the penalty therefor or may remit or reduce such penalty on such terms and conditions as the Panel or the Board shall deem fair and equitable.

(j) When a member is suspended under the provisions of this Rule, such member shall be deprived during the term of his suspension of all rights and privileges of membership. No such suspension shall operate to bar or affect the payments provided for by Article XV of the Constitution of the Exchange in the event of the death of the suspended member. The expulsion of a member shall terminate all rights and privileges arising out of his membership except such rights as he may have under the provisions of Sections 11 and 14 of Article II of the Constitution.

(k) Any approved person or registered or non-registered employee who shall neglect to pay any fine within forty five days after the same shall become payable may, after written notice mailed to such person at either his office or last place of residence as reflected in Exchange records, be summarily suspended from association in any capacity with a member organization or have his approval withdrawn until such fine is paid. (See Art. X, Sec. 6 for penalties imposed upon members, allied members and member organizations for failure to pay fines or other sums due the Exchange.)

Whenever a member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization is suspended under the provisions of this Rule, [he or it] *that person or organization* may be proceeded against for any offense other than that for which such member, member organization, allied member, approved person or registered or non-registered employee was suspended. The suspension or expulsion of a member or allied member under the provisions of this Rule shall create a vacancy in any office or position held by him.

(l) Notwithstanding any other provisions of this Rule, the Chief Executive Officer (a) may not require a review by the Board under this Rule and (b) shall be recused from deliberations and actions of the Board with respect to matters to be reviewed by the Board under this Rule.

* * * * *

NYSE Constitution

* * * * *

ARTICLE IX Disciplinary Proceedings

Sec. 1. Disciplinary Rules. The Board shall adopt such rules as it deems necessary or appropriate for the discipline of members, member organizations, allied members, approved persons, and registered and non-registered employees of members and member organizations for the violation of the Act, the rules of the Exchange and for such other offenses as may be set forth in the rules of the Exchange. The Board shall also adopt such rules as it deems necessary or appropriate governing the conduct of disciplinary proceedings including disciplinary hearings and reviews thereof. The determination and penalty, if any, of the Board after review shall be final and conclusive, subject to the provisions of the Act.

Sec. 2. Hearing Panel. All proceedings relating to disciplinary matters, except as otherwise specifically set forth in the rules of the Exchange [with respect to procedural and evidentiary matters,] shall be conducted before a hearing panel consisting of at least three persons[;]*:* a hearing officer, who shall [be chairman of] *chair* the panel, [with the remainder of the panel being] *and at least two* members of the hearing board.

Sec. 3. Hearing Board. The Chairman of the Board, subject to the approval of the Board, shall from time to time appoint a hearing board to be composed of such number of members and allied members of the Exchange who are not members of the Board or of the Board of Executives, and registered employees and non-registered employees of members and member organizations, *and such other persons as set forth in the rules,* as the Chairman of the Board shall deem necessary. The members of the hearing board shall be appointed annually and serve at the pleasure of the Board. The Chairman of the Board, subject to the approval of the Board, shall also designate [from among the officers and employees of the Exchange] a chief hearing officer and one or more other hearing officers who shall have no Exchange duties or functions relating to the investigation or preparation of disciplinary matters and who shall be appointed annually and shall serve as hearing officers at the pleasure of the Board. *An individual cannot be a hearing officer (including the chief hearing officer) if he or she is, or within the last three years was, a member, allied member, or registered or non-registered employee of a member or member organization.*

Sec. 4. Composition of Hearing Panel. [In any disciplinary proceeding involving as a respondent therein a member, member organization, allied member, or approved person, the members of the hearing board serving on the panel shall be members or allied members. In any such proceeding relating to activities on the floor of the Exchange, at least one of the persons serving on the panel shall be a member active on the floor of the Exchange. In any such proceeding relating to any other activities, at least one of the persons serving on the panel shall work in the office of a member or member organization which engages in a business involving substantial direct contact with securities customers.]

[In any disciplinary proceeding involving as a respondent therein a registered or non-registered employee of a member or member organization who is not a member or allied member, the members of the hearing board serving on the panel shall be registered employees or non-registered employees of members or member organizations who are not members or allied members. In any such proceeding relating to such employee's activities on the floor of the Exchange, at least one of the persons serving on the panel shall be a registered or non-registered employee of a member or member organization active on the floor of the Exchange who is not a member or allied member. In any such proceeding relating to any other activities, at least one of the persons serving on the panel shall work in the office of a member or member organization which engages in a business involving substantial direct contact with securities customers.]

[In any disciplinary proceeding involving as joint respondents therein one or more members or member organizations, allied members or approved persons, together with one or more registered or non-registered employees of a member or member organization who are not members or allied members, at least one of the persons serving on the panel shall be a member or allied member and at least one other person serving on the panel shall be a registered or non-registered employee of a member or member organization who is not a member or allied member, and the functional qualifications required of hearing panel members as stated in this Section shall be satisfied.]

A hearing panel shall be composed of a hearing officer, who shall chair the panel, and at least two members of the hearing board, at least one of whom shall be engaged in securities activities differing from that of the respondent. In

any disciplinary proceeding involving activities on the Floor of the Exchange, no more than one of the persons serving on the hearing panel shall be active on the Floor of the Exchange. The decision of a majority of the panel shall be the decision of the panel and shall be final and conclusive, unless a request to the Board for review is filed as provided in this Article and in the rules of the Exchange.

Sec. 5. Penalties. If a member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization is adjudged guilty in any disciplinary proceeding, the hearing panel*, or, to the extent provided in the rules, the hearing officer,* shall impose one or more of the following disciplinary sanctions: expulsion, suspension; limitation as to activities, functions, and operations, including the suspension or cancellation of a registration in, or assignment of, one or more stocks, fine, censure, suspension or bar from being associated with any member or member organization, or any other fitting sanction. [In any disciplinary proceeding, any sanction imposed may be remitted or reduced by the hearing panel on such terms and conditions as it shall deem fair and equitable. In a disciplinary proceeding involving a written consent to the imposition of a specified penalty, the hearing panel in imposing a penalty, may impose the penalty agreed to or any penalty which is less severe than the stipulated penalty as it deems appropriate or the hearing panel may reject such consent.]

Sec. 6. Review. In a disciplinary proceeding not involving a written consent to the imposition of a specified penalty, any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, adjudged guilty of any charge, or the division [or department] of the Exchange which brought the charges, [or] *and* any member of the Board*,* [or] *any member of* the Board of Executives *representing the groups referenced in clauses (ii) and (iii) of Article V, Section 2(b), any member of the Board of Executives in such other categories as the Board, by rule, shall designate, and any member of the Regulation, Enforcement & Listing Standards Committee,* may, in accordance with procedures set forth in the rules of the Exchange, require a review by the Board, of any determination or penalty, or both [, imposed by the hearing panel]. Upon review, the Board, by the affirmative vote of a majority of the entire Board, may sustain any determination or penalty imposed, may modify or reverse any such determination, and may increase, decrease or eliminate any such penalty, or impose any penalty permitted under this Article as it deems appropriate.

In a disciplinary proceeding involving a written consent to the imposition of a specified penalty, any member of the Board*,* or the Board of Executives *specified in or designated pursuant to the preceding paragraph, and any member of the Regulation, Enforcement & Listing Standards Committee* may require a review by the Board of any determination or penalty, or both[, imposed by the hearing panel. In any such proceeding, the division or department which entered into the written consent, may require a review by the Board of any penalty, including any determination related thereto, imposed by the hearing panel, which is less severe than the stipulated penalty]. The respondent or the division or department which entered into the written consent may require a review by the Board of any rejection of the written consent by the hearing panel. Any review provided in this paragraph shall be conducted in accordance with procedures set forth in the rules of the Exchange. Upon review, the Board, by the affirmative vote of a majority of the entire Board, may fix and impose the penalty agreed to in such written consent or any penalty which is less severe than the stipulated penalty, or remand the case for further proceedings.

Notwithstanding any other provisions of this Section, the Chief Executive Officer (a) may not require a review by the Board under this Section and (b) shall be recused from deliberations and actions of the Board with respect to matters to be reviewed by the Board under this Section.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article IX of the Exchange's Constitution and NYSE Rules 475 and 476 to modify certain aspects of the Exchange's disciplinary procedures and to provide a structure for a summary suspension hearing to prohibit or limit a person's access to services and a ''call-up'' procedure for review by members of the Board, certain members of the Board of Executives listed in NYSE Rule 476(f), any member of the Regulation, Enforcement and Listing Standards Committee and either the Division of the Exchange that initiated the proceedings or the respondent.

Amendment to NYSE Rule 475

NYSE Rule 475 currently provides a process for the Exchange: (i) To prohibit or limit a person with respect to access of services offered by the Exchange, or (ii) to summarily suspend an Exchange member or member organization facing certain circumstances, such as financial or operating difficulties, or expulsion or suspension by another self-regulatory organization (''SRO''). NYSE Rule 475 permits the subject individual or organization to request and obtain a hearing. The proposed rule change would provide a structure for such a hearing and for a ''call-up'' procedure for review by members of the Board and certain members of the Board of Executives, any member of the Regulation, Enforcement and Listing Standards Committee and either the Division of the Exchange that initiated the proceedings or the respondent.

Amendments to Constitution and NYSE Rule 476

Amendments to Constitution

At the Exchange's annual members' meeting on April 7, 2005, the members voted to amend the Exchange's Constitution to modify certain aspects of the Exchange's disciplinary process. The Exchange had engaged former Federal judge Stanley Sporkin to review and make recommendations regarding the Exchange's disciplinary process. The amendments adopted at the member's meeting were proposed by the Exchange's Board, in part, in response to Judge Sporkin's recommendations. The amendments would:

- Require that at least one member of any hearing panel be employed in a field of activity other than that in which the charged person is employed;

• Remove the constitutional requirement that full panels handle stipulations and uncontested cases;

• Permit individuals who are not employees of the Exchange to serve as hearing officers;

• In conjunction with the proposed amendments to the Exchange's principal disciplinary rule, NYSE Rule 476, permit former members and allied members, and former registered and non-registered employees of members and member organizations to be appointed to the Hearing Board within five years of their retirement;

• Remove the constitutional requirement that a hearing panel decide all matters except procedural and evidentiary matters; and

• Relieve members of the Board of Executives (other than those representing the trading floor) from the responsibility for ''calling up'' disciplinary decisions for review, and extend that responsibility to all members of the Regulation, Enforcement and Listing Standards Committee.

A collateral effect of the changes would be to reduce the overlap between the Constitutional text and NYSE Rule 476 by removing some of the detail that is currently in the Constitution. The Exchange believes that this would enable the Board to effect further refinements to the Exchange's disciplinary process without a vote of the membership, so long as those changes are consistent with the revised Constitutional text.

Composition of Hearing Panels in Disciplinary Proceedings

The Exchange's Constitution currently requires that disciplinary hearings be conducted before a hearing panel consisting of a hearing officer (an Exchange staff member) and two peer panelists. Charges against a member must be heard by a panel including two members; charges against member firm employees must be heard by a panel including other member firm employees; and cases involving activity on the Exchange floor must include at least one panelist engaged in floor activities. The Exchange believes that this ''trial by peers'' requirement raises a concern about bias and perception of bias. In cases involving charges against individuals on the trading floor, the perception of bias is potentially heightened because of the relatively small floor community. Although the Exchange has found no empirical evidence to indicate that bias exists in the Exchange's disciplinary proceedings, the Exchange believes that any perception of bias would be reduced if at least one member of a hearing panel were required to be employed in a field of activity other than that in which the charged person is employed.

For example, in a case involving the trading floor, charges against a specialist or floor broker would be heard before a hearing panel consisting of no more than one individual employed on the trading floor. In effect, the available pool of panelists to hear a particular matter would be expanded, and any possible perceptions of bias in having a majority of the panel members in the same line of business as the respondent would be avoided. The amendments would, nevertheless, allow individuals with extensive knowledge of the securities industry, in general, and the particular business of the respondent to serve on hearing panels.

Furthermore, the proposed rule change would permit hearing officers to handle stipulations and uncontested cases without the full hearing panel. Currently, all disciplinary hearings (including settled cases, in which a respondent consents to a penalty, and uncontested cases, in which a respondent does not file an answer to the charges) must be heard before a full hearing panel. Under the constitutional amendments, in conjunction with the proposed amendments to NYSE Rule 476, a hearing officer of the Exchange, acting alone, could consider such uncontested cases and settled cases and impose penalties, without a hearing, in order to expedite resolution of such matters. The hearing officer would convene a hearing panel and hold a hearing if either the Enforcement Division or the respondent requests a hearing before a full panel, or if the hearing officer on his or her own initiative calls for a hearing. Moreover, the hearing officer could not reject a stipulated penalty without convening a hearing panel.

The Amendments to the Constitution, in Conjunction With the Proposed Amendments to NYSE Rule 476, Would Allow Non-NYSE Employees To Serve as Hearing Officers and Certain Recently Retired Individuals To Be Appointed to the Hearing Board

The amendments to the Constitution would eliminate the requirement that Exchange hearing officers be employees or officers of the Exchange, thereby enabling the Exchange to retain outside professionals to serve as hearing officers if needed. For example, if the Exchange experienced a sudden increase in disciplinary cases, it could retain part-time hearing officers to manage the increased caseload. However, under the amendments to the Constitution and the proposed amendments to NYSE Rule 476, an individual who is, or was within the last three years, a member, allied member, or registered or non-registered employee of a member or member organization would not be eligible to serve as a hearing officer.

The proposed rule change also would allow former members, allied members, and former registered and non-registered employees of members and member organizations to be appointed to the Hearing Board within five years of their retirement.[5] This would enlarge the pool of individuals with the requisite expertise to adjudicate cases. In addition, these individuals could more readily serve during normal business hours, potentially allowing cases to be resolved more expeditiously. However, a hearing panel could include only one retired person.

Hearing Officer Authority To Resolve Substantive Legal Motions

The proposed rule change would permit hearing officers to resolve substantive legal motions, such as motions to dismiss and motions for summary judgment, by no longer requiring that a hearing panel resolve such motions. This authority could serve to expedite the hearing process by allowing the hearing officer to resolve motions that currently require action by the full panel. In addition, these motions often involve legal issues that the hearing officer, who historically has been an attorney, is best suited to resolve.

''Call Up'' Authority Reallocated

At present, all members of the Board of Executives (as well as all Directors other than the Chief Executive Officer) have the right and the responsibility to ''call up'' disciplinary decisions for review. The Exchange believes that the Board of Executives' members who represent investors, listed companies, ''upstairs'' firms, and others do not ordinarily have the requisite experience to discharge this responsibility well. On the other hand, the Exchange believes that the Board of Executives' members representing the trading floor and

[5] The proposed rule change would amend NYSE Rule 476 to state that members of its Board of Executives may not serve on the Hearing Board. The Exchange, however, has advised that it intends to submit an amendment to the proposed rule change to conform the text of NYSE Rule 476 regarding the composition of the Hearing Board with the language contained in Article IX, Section 3 of the Exchange's Constitution. In this regard, NYSE Rule 476 will be amended to state that Hearing Board members may not be members of the Exchange's Board or of its Board of Executives. Telephone conversation between Peggy Kuo, Chief Hearing Officer, NYSE and Cyndi N. Rodriguez, Special Counsel, Division, Commission on October 17, 2005.

members of the Regulation, Enforcement and Listing Standards Committee are well suited to discharge this responsibility. The amendments to the Constitution and NYSE Rule 476 would reallocate this responsibility accordingly, but would preserve the Board of Directors' right to charge other classes of members of the Board of Executives with this responsibility if warranted.

Amendment to NYSE Rule 476

Composition of Hearing Panels in Disciplinary Proceedings

The Exchange's Constitution and Rules currently require that disciplinary hearings be conducted before a Hearing Panel consisting of a Hearing Officer (an Exchange staff member) and two peer panelists. Charges against a member must be heard by a panel including two members; charges against member firm employees must be heard by a panel including other member firm employees; and cases involving activity on the Exchange floor must include at least one panelist engaged in floor activities. The Exchange believes that the requirement of ''trial by peers'' raises a concern about bias and perception of bias, particularly with respect to charges against individuals on the trading floor, given the relatively small floor community.

The proposed rule changes would reverse these requirements, in effect, requiring that at least one panelist in every case be employed in an area of responsibility other than that of the person facing charges. With respect to cases involving the trading floor, the intent of the proposal is such that charges against a specialist or floor broker would be heard before a panel consisting of no more than one individual employed on the trading floor. By doing so, the available pool of panelists to hear a particular matter would be expanded, and the perception of bias in having a majority of the panel members in the same line of business as the respondent would be avoided. The proposals would, nevertheless, allow individuals with extensive knowledge of the securities industry in general, and the particular business of the respondent, to serve on Hearing Panels.

Furthermore, at present, all disciplinary hearings (including settled cases, in which a respondent consents to a penalty, and uncontested cases, in which a respondent does not file an answer to the charges) must be heard before a Hearing Panel. The proposal would confer authority on an Exchange Hearing Officer alone to consider consents and uncontested cases, without a hearing, in order to expedite resolution of such matters. The Hearing Officer would convene a panel and hold a hearing if either Enforcement or the respondent requests a hearing before a full panel, or if the Hearing Officer, on his or her own initiative, calls for a hearing. Moreover, the Hearing Officer could not reject a stipulated penalty without convening a Hearing Panel.

Conferring Jurisdiction on the Hearing Board Upon Filing of the Charge Memorandum

Under current procedures, the hearing in a disciplinary matter is scheduled only upon request of the Division of Enforcement, after a respondent's answer is received or the time to file an answer has expired. The Hearing Board has no jurisdiction to resolve any issues that arise until the Division of Enforcement requests a hearing, and a respondent has no avenue of recourse if the respondent believes there has been an unreasonable or prejudicial delay. The proposed rule changes would require the filing of charges with the Hearing Board at the time they are served on the respondent. The Hearing Board would assume jurisdiction of the matter at that juncture and be able to schedule expeditiously hearings, as well as rule on pre-hearing motions.

Hearing Officer Authority To Order Pre-Hearing Discovery and Resolve Substantive Legal Motions

Today, a Hearing Officer has clear authority to order pre-hearing discovery of documents from the Division of Enforcement. The proposed rule change would clarify the Hearing Officer's authority to order discovery from the respondent as well. In addition, the proposal would permit the Hearing Officer to resolve substantive legal motions, such as motions to dismiss and motions for summary judgment.

Hearing Officer Authority To Penalize Contemptuous Participants

A Hearing Officer must necessarily have the authority to control the proceedings, including dealing with obstreperous and disruptive participants. The proposal would make this authority clear, and permit the Hearing Officer to impose fines on a party for inappropriate behavior of either the party or the party's representative. This authority would not be limited to dealing with such behavior during a hearing, but would allow for sanctions to be imposed at any time during the course of proceedings. The Hearing Officer could also, in extreme situations, exclude any such persons from further participation in the proceeding.

Allowing Non-NYSE Employees To Serve as Hearing Officers, and Allowing Certain Recently Retired Individuals To Be Appointed to the Hearing Board

The proposed rule changes would eliminate the requirement that Exchange Hearing Officers be employees or officers of the Exchange, thereby enabling the Exchange to retain outside consultants to serve as Hearing Officers, if and when needed. The proposals also would allow recently retired members, allied members, registered and non-registered employees of members and member organizations to be appointed to the Hearing Board within five years of their retirement.

''Call Up'' Authority Reallocated

At present, all members of the Board of Executives (as well as all Directors other than the Chief Executive Officer) have the right to ''call up'' disciplinary decisions for review. This authority would be reallocated to members of the Board, Board of Executives' members representing the trading floor, and members of the Regulation, Enforcement and Listing Standards Committee.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(5) [6] of the Act in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

[6] 15 U.S.C. 78f(b)(5).

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- By order approve such proposed rule change; or
- Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods.

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR-NYSE–2005–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE and on the NYSE's Web site, *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–37 and should be submitted on or before November 16, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5923 Filed 10–25–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5209]

Bureau of Economic and Business Affairs; List of September 20, 2005, of Participating Countries and Entities (Hereinafter Known as ''Participants'') Under the Clean Diamond Trade Act of 2003 (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: In accordance with Sections 3 and 6 of the Clean Diamond Trade Act of 2003 (Public Law 108–19) and Section 2 of Executive Order 13312 of July 29, 2003, the Department of State is identifying all the Participants eligible for trade in rough diamonds under the Act, and their respective Importing and Exporting Authorities, and revising the previously published list of August 22, 2005 (70 FR 49006–49007)

FOR FURTHER INFORMATION CONTACT: Sue Saarnio, Special Advisor for Conflict Diamonds, Bureau of Economic and Business Affairs, Department of State (202) 647–1713.

SUPPLEMENTARY INFORMATION: Section 4 of the Clean Diamond Trade Act (the ''Act'') requires the President to prohibit the importation into, or the exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme (KPCS). Under Section 3(2) of the Act, ''controlled through the Kimberley Process Certification Scheme'' means an importation from the territory of a Participant or exportation to the territory of a Participant of rough diamonds that is either (i) carried out in accordance with the KPCS, as set forth in regulations promulgated by the President, or (ii) controlled under a system determined by the President to meet substantially the standards, practices, and procedures of the KPCS. The referenced regulations are contained at 31 CFR Part 592 (''Rough Diamonds Control Regulations'') (69 FR 56936, September 23, 2004).

Section 6(b) of the Act requires the President to publish in the **Federal Register** a list of all Participants, and all Importing and Exporting Authorities of Participants, and to update the list as necessary. Section 2 of Executive Order 13312 of July 29, 2003 delegates this function to the Secretary of State. Section 3(7) of the Act defines ''Participant'' as a state, customs territory, or regional economic integration organization identified by the Secretary of State. Section 3(3) of the Act defines ''Exporting Authority'' as one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate a Kimberley Process Certificate. Section 3(4) of the Act defines ''Importing Authority'' as one or more entities designated by a Participant into whose territory a shipment of rough diamonds is imported as having the authority to enforce the laws and regulations of the Participant regarding imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

List of Participants

Pursuant to Section 3 of the Clean Diamond Trade Act (the Act), Section 2 of Executive Order 13312 of July 29, 2003, and Delegation of Authority No. 245 (April 23, 2001), I hereby identify the following entities as of September 20, 2005, as Participants under section 6(b) of the Act. Included in this List are the Importing and Exporting Authorities for Participants, as required by Section 6(b) of the Act. This list revises the previously published list of August 15, 2005 (70 FR 49006–49007, August 22, 2005).

Angola—Ministry of Geology and Mines.

Armenia—Ministry of Trade and Economic Development.

Australia—Exporting Authority—Department of Industry, Tourism and Resources; Importing Authority—Australian Customs Service.

Belarus—Department of Finance.

Botswana—Ministry of Minerals, Energy and Water Resources.

Brazil—Ministry of Mines and Energy.

Bulgaria—Ministry of Finance.

Canada—Natural Resources Canada.

Central African Republic—Ministry of Energy and Mining.

China—General Administration of Quality Supervision, Inspection and Quarantine.

Democratic Republic of the Congo—Ministry of Mines and Hydrocarbons.

Croatia—Ministry of Economy.

European Community—DG/External Relations/A.2.

Ghana—Precious Minerals and Marketing Company Ltd.

Guinea—Ministry of Mines and Geology.

Guyana—Geology and Mines Commission.

India—The Gem and Jewellery Export Promotion Council.

Indonesia—Directorate General of Foreign Trade of the Ministry of Trade.

Israel—The Diamond Controller.

Ivory Coast—Ministry of Mines and Energy.

Japan—Ministry of Economy, Trade and Industry.

Republic of Korea—Ministry of Commerce, Industry and Energy.

Laos—Ministry of Finance.

Lebanon—Ministry of Economy and Trade.

Lesotho—Commissioner of Mines and Geology.

Malaysia—Ministry of International Trade and Industry.

Mauritius—Ministry of Commerce.

Namibia—Ministry of Mines and Energy.

Norway—The Norwegian Goldsmiths' Association.

Romania—National Authority for Consumer Protection.

Russia—Gokhran, Ministry of Finance.

Sierra Leone—Government Gold and Diamond Office.

Singapore—Singapore Customs.

South Africa—South African Diamond Board.

Sri Lanka—National Gem and Jewellery Authority.

Switzerland—State Secretariat for Economic Affairs.

Taiwan—Bureau of Foreign Trade.

Tanzania—Commissioner for Minerals.

Thailand—Ministry of Commerce.

Togo—Ministry of Mines and Geology.

Ukraine—State Gemological Centre of Ukraine.

United Arab Emirates—Dubai Metals and Commodities Center.

United States of America—Importing Authority—United States Bureau of Customs and Border Protection; Exporting Authority—Bureau of the Census.

Venezuela—Ministry of Energy and Mines.

Vietnam—Ministry of Trade.

Zimbabwe—Ministry of Mines and Mining Development.

Robert B. Zoellick,

Deputy Secretary of State, Department of State.

[FR Doc. 05–21377 Filed 10–25–05; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5171]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: The International Telecommunication Advisory Committee announces meetings in preparation for the December meeting of the International Telecommunication Union Telecommunication Development Advisory Group (TDAG) and December meetings of the Organization for Economic Cooperation and Development/Committee for Information, Computer and Communications Policy (OECD/ICCP) Working Party on Telecommunications and Information Services Policies (TISP) and Working Party on the Information Economy (WPIE). Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair. Directions to the meeting location are available to the public on the Internet and conference bridge information may be obtained from *minardje@state.gov.* End Summary.

The International Telecommunication Advisory Committee (ITAC) will meet at the U.S. Department of State, Harry S. Truman Building Room 2533A to prepare for meetings of the OECD/ICCP Working Parties ITU–D Telecommunication Development Advisory Group (TDAG), on Wednesday, November 16, and Wednesday, November 30, 2005, all meetings 2–3 p.m. The International Telecommunication Advisory Committee (ITAC) will meet at the U.S. Department of State, Harry S. Truman Building Room 2533A to prepare for meetings of the ITU–D Telecommunication Development Advisory Group (TDAG), on Thursday, November 3, Thursday, November 10, and Thursday, November 17, 2005, all meetings 10 a.m.—noon.

Dated: October 19, 2005.

Marian Gordon,

Director, Telecommunication & Information Standardization, International Communications & Information Policy, Department of State.

[FR Doc. 05–21376 Filed 10–25–05; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Delta County Airport Escanaba, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the lease of the airport property. The proposal consists of 1 parcel of land, totaling approximately 3.6 acres. Current use and present condition is undeveloped land compatible with local commercial/industrial zoning classification. The land was acquired under part of the property from the City of Escanaba deeded to Delta County for airport use. There are no impacts to the airport by allowing the airport to lease of the property. Subject land may provide good commercial/industrial development opportunities for the community and are well outside airport perimeter fence limits. Approval does not constitute a commitment by the FAA to financially assist in the lease of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the lease of the airport property will be in accordance FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before October 28, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Marlon D. Peña, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET–ADO 610, 11677 South Wayne Road, Romulus, Michigan 48174. Telephone Number (734) 229–2909/ FAX Number (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Delta County Airport, Escanaba, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property

located in Escanaba, Delta County, Michigan and described as follows:

Parcel 1 (3.6 Acres) East Parcel

From the center ¼ corner of section 1 T. 38 N., R. 23 W., measure S. 89 55′24″ W. Along the east-west ¼line of said section a distance of 564.89 feet to the point of beginning of the land herein described, thence N.0 43′38″ E. A distance of 138.97 feet, thence S.88 58′42″ E. A distance of 844.41 feet to the beginning of a 224.00 foot radius curve to the right, thence southeasterly along said curve a chord bearing of S. 51 42′43″ E. A chord distance of 271.27 feet, thence S. 37 52′53″ W. A distance of 37.31 feet, thence N.44 05′25″ W. A distance of 861.21 feet to the beginning of a 963.58 foot radius curve to the right, thence southwesterly along said curve a chord bearing of S. 89 46′32″ W. A chord distance of 37.80 feet to the beginning of 15.91 foot radius curve to the right, thence northwesterly along said curve a chord bearing of N.44 11′12″ W. A chord distance of 22.46 feet, thence N.0 43′38″ E. A distance of 15.45 feet to the point of beginning. Containing 3.53 acres.

Issued in Romulus, Michigan, on September 28, 2005.

Irene R. Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 05–21391 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice For Waiver of Aeronautical Land-Use Assurance, Delta County Airport, Escanaba, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the lease of the airport property. The proposal consists of 1 parcel of land, totaling approximately 37 acres. Current use and present condition is undeveloped land compatible with local commercial/industrial zoning classification. The land was acquired under part of the property from the City of Escanaba deeded to Delta County for airport use. There are no impacts to the airport by allowing the airport to lease of the property. Subject land may provide good commercial/industrial development opportunities for the community and are well outside airport perimeter fence limits. Approval does not constitute a commitment by the FAA to financially assist in the lease of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the lease of the airport property will be in accordance FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 34107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before November 25, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Marlon D. Peña, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET–ADO 610, 11677 South Wayne Road, Romulus, Michigan 48174. Telephone Number (734) 229–2909 / FAX Number (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Delta County Airport, Escanaba, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Escanaba, Delta County, Michigan, and described as follows:

Parcel 1 (37 Acres) West Parcel

Beginning at the E¼ corner of section 2 T.38W., R.23W., Thence N. 89° 59′02″ W. Along the east-west ¼ line of said section a distance of 2659.78 feet to the center ¼ corner of said section, thence continue N. 89° 59′02″ W. along said ¼ line of a distance of 738.64 feet, thence N. 0° 55′41″ E. A distance of 411.60 feet to a point that is 847.0 feet south of and measure at right angles from the center line of Delta County Airport's East-West Runway, thence S. 89° 02′161″ E. Parallel with and 847.00 feet south of said center line a distance of 4077.56 feet, thence S. 16° 00′58″ E. A distance of 450.11 feet, thence N. 89° 06′02″ W. A distance of 265.14 feet to the beginning of a 944.04 foot radius curve to the right, thence northwesterly along said curve a chord bearing of N. 80° 33′42″ W. A chord distance of 280.46 feet to the beginning of a 789.81 foot radius curve to the left, thence northwesterly along said curve a chord bearing of N. 81° 05′12″ W. A chord distance of 246.58 feet, thence N. 89° 59′02″ W. a distance of 23.73 feet to the point of beginning. Containing 36.80 acres.

Issued in Romulus, Michigan, on September 29, 2005.

Irene R. Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 05–21392 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–22650]

Agency Information Collection Activities; Request for Comment; Clearance of a New Information Collection: Commercial Driver's License Policies and Practices Among the 51 Jurisdictions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice advises the public about FMCSA's intention to request Office of Management and Budget (OMB) approval for a new information collection concerning the Commercial Driver's License (CDL) policies and practices among the 50 States and the District of Columbia (referred to as the 51 jurisdictions). This information is needed to identify where problems exist within the CDL Program and how to address those problems through new or revised safety initiatives. This notice is required by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before December 27, 2005.

ADDRESSES: All comments should reference Docket No. FMCSA–2005–22650. You may mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to 202/493–2251; or submit electronically at *http://dms.dot.gov.*

You may examine and copy all comments received at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you desire your comment to be acknowledged, you must include a self-addressed stamped envelope or postcard or, if you submit your comments electronically, you may print the acknowledgment.

FOR FURTHER INFORMATION CONTACT: Ms. Glenda Davis, phone (202) 366–5209; FAX (202) 366–7298; or e-mail *glenda.davis@fmcsa.dot.gov;* Federal Motor Carrier Safety Administration, DOT, 400 Seventh Street, SW., Washington, DC 20590. For additional information and copies of the information collection instrument and instructions, contact Ms. Lorena F. Truett, National Transportation Research Center, 2360 Cherahala Boulevard, Room I–32, Knoxville, TN 37932; phone (865) 946–1306; FAX (865) 946–1314; or e-mail: *TruettLF@ornl.gov.* Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Commercial Driver's License Policies and Practices Among the 51 Jurisdictions.

OMB Control No: 2126–XXXX.

Background: In 1986, the Commercial Motor Vehicle Safety Act (CMVSA) (Public Law 99–570, Title XII, 100 Stat. 3207–170 (October 27, 1986)) was passed in an effort to improve highway safety as it related to commercial motor vehicle drivers. The CDL program was created as a result of that Act. The Motor Carrier Safety Improvement Act (MCSIA) of 1999 (Public Law 106–159,113 Stat. 1748 (December 9, 1999)) further strengthened the CDL Program through more vehicle and driver inspections and carrier compliance reviews, stronger enforcement, expedited completion of rules, and effective CDL testing, record keeping, and sanctions. The goal of both the CMVSA and MCSIA was to improve highway safety by ensuring that drivers of commercial vehicles were qualified to operate those vehicles and to remove unsafe and unqualified drivers from the highways.

The Federal Motor Carrier Safety Administration (FMCSA), within the U.S. Department of Transportation (DOT), conducts Compliance Reviews (CRs) of the 50 States and the District of Columbia in Washington, DC, to ensure that the States are complying with the Federal Motor Carrier Safety Regulations (FMCSRs). Additional objectives of the State CRs include the following: identifying technical, operational, and administrative deficiencies in State CDL programs; establishing a mechanism for identifying and correcting serious program deficiencies; and identifying opportunities for CDL fraud.

FMCSA conducted CRs on every State. Based on the results of the State CRs, some States had fewer compliance issues than others. It appears, however, that each State was in non-compliance to some degree at the time the CR was conducted in the State. It is necessary for FMCSA to understand why the States are in non-compliance. While there is anecdotal evidence that the fault may lie with the various processes within the States, or a failure by FMCSA to provide adequate guidance, or even with the Federal regulations, there has been no systematic effort to determine the cause of State non-compliance with the CDL requirements. For FMCSA to find a solution which brings the States into compliance with the CDL Federal regulations and increases commercial-vehicle safety, FMCSA must obtain input from the States.

The primary means for obtaining information from the State officials will be via a password-protected Web site. In the introduction (''welcome screen'') to the questionnaire, the respondent will be provided alternatives for taking the survey via a paper copy or over the phone with an FMCSA contractor. If the respondent indicates a preference for the paper copy or phone survey, arrangements will be made for administering the survey in the desired format. In addition, any respondents who prefer to be interviewed via a phone call will also be provided an e-mail address so they may submit additional comments if desired.

Respondents: Each of the 51 jurisdictions (50 States plus the District of Columbia) will be contacted.

Frequency: Once.

Estimated Average Burden per Response: 1 hour per response.

Estimated Total Annual Burden Hours: 51 hours (51 jurisdictions x 1 hour per response).

Public Comments Invited

You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA's performance; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; Pub. L. 99–570, Title XII, 100 Stat. 3207–170 (October 27, 1986); Pub. L. 106–159, 113 Stat. 1748 (December 9, 1999); and 49 CFR § 1.73.

Issued on: October 21, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–21397 Filed 10–25–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34728]

Marquette Rail, LLC—Lease and Operation Exemption—CSX Transportation, Inc.

Marquette Rail, LLC (MQT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease, from CSX Transportation, Inc. (CSXT), and operate approximately 129.03 miles of rail line extending between: (a) Milepost CGE 3.6 at the Grand Rapids, MI station and milepost CGE 73.71 at the Baldwin, MI station; (b) milepost CB 106.91 at the Baldwin station and milepost CB 136.5 at the Ludington, MI station; (c) milepost CBA 87.0 at the Walhalla, MI station and milepost CBA 113.7 at the Manistee, MI station; and (d) milepost CBA 113.7 at the Manistee station and the end of track at Filer City, MI (the Filer City Spur, approximately 2.63 miles in length).

MQT certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier. However, because its projected annual revenues may exceed $5 million, MQT also certifies that it has complied with the posting and service requirements of 49 CFR 1150.32(e).[1] The transaction was scheduled to be consummated on or after October 14, 2005.

If the verified notice contains false or misleading information, the exemption

[1] MQT states that at the time the labor notice was given, MQT planned to purchase the track and other rail improvements and to lease the underlying right-of-way. However, MQT will instead be leasing on a long-term basis both the track and other rail improvements and the underlying right-of-way. In addition, the labor notice also indicated that the milepost at Baldwin in segment (b) was CB 107.0. MQT has been advised by CSXT that, while milepost CB 107.0 is used to signify Baldwin for operating purposes, the actual milepost is CB 106.91. Therefore, MQT and CSXT have amended all of their agreements to reflect the milepost for Baldwin as CB 106.91. Also, in the labor notice, the milepost at Baldwin in segment (a) was incorrectly listed as CGE 73.4 instead of CGE 73.71. Finally, the total mileage is accordingly approximately 129.03 not 128.63 as stated in the labor notice. However, under the revised lease arrangements and milepost changes, no additional CSXT employees will be affected, MQT will still be responsible for all operations and maintenance and the change will not affect the number of positions that MQT anticipates will be available.

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. 34728, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 21, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–21410 Filed 10–25–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34760]

Arkansas Southern Railroad, Inc.—Lease Exemption—The Kansas City Southern Railway Company

Arkansas Southern Railroad, Inc. (ARSR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from The Kansas City Southern Railway Company and operate approximately 61 miles of rail lines located in Arkansas and Oklahoma. The rail lines extend from: (1) Milepost 4.0, near Heavener, OK, to milepost 33.0, at the end of the track at Waldron, AR; and (2) milepost 32.0, at Ashdown, AR, to milepost 0.0, at the end of the track near Nashville, AR, not including the 601 track switch at Ashdown, AR.

This transaction is related to STB Finance Docket No. 34761, *Watco Companies, Inc.—Continuance in Control Exemption—Arkansas Southern Railroad, Inc.,* wherein Watco Companies, Inc., has filed a notice of exemption to continue in control of ARSR upon its becoming a Class III rail carrier.

ARSR certifies that its projected revenues as a result of the transaction will not result in ARSR's becoming a Class II or Class I rail carrier. ARSR also certifies that its projected annual revenues will not exceed $5 million.

The transaction was expected to be consummated on or shortly after October 9, 2005.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34760, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik, LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 21, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–21402 Filed 10–25–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34761]

Watco Companies, Inc.—Continuance in Control Exemption—Arkansas Southern Railroad, Inc.

Watco Companies, Inc. (Watco), has filed a verified notice of exemption to continue in control of Arkansas Southern Railroad, Inc. (ARSR), upon ARSR's becoming a Class III rail carrier.[1]

The transaction was expected to be consummated on or shortly after October 9, 2005.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34760, *Arkansas Southern Railroad, Inc.—Lease Exemption—The Kansas City Southern Railway Company.* In that proceeding, ARSR seeks to acquire by lease from The Kansas City Southern Railway Company and operate approximately 61 miles of rail lines in Arkansas and Oklahoma extending from: (1) Milepost 4.0, near Heavener, OK, to milepost 33.0, at the end of the track at Waldron, AR; and (2) milepost 32.0, at Ashdown, AR, to milepost 0.0, at the end of the track near Nashville, AR, not including the 601 track switch at Ashdown, AR.

Watco, a Kansas corporation, is a noncarrier that currently controls 14 Class III rail carriers: South Kansas and Oklahoma Railroad Company (SKO), Palouse River & Coulee City Railroad, Inc. (PRCC), Timber Rock Railroad, Inc. (TIBR), Stillwater Central Railroad, Inc. (SLWC), Eastern Idaho Railroad, Inc. (EIRR), Kansas & Oklahoma Railroad, Inc. (K&O), Pennsylvania Southwestern Railroad, Inc. (PSWR), Great Northwest Railroad, Inc. (GNR), Kaw River Railroad, Inc. (KRR), Mission Mountain Railroad, Inc. (MMT), Appalachian & Ohio Railroad, Inc. (AO), Mississippi Southern Railroad, Inc. (MSRR), Yellowstone Valley Railroad, Inc. (YVRR), and Louisiana Southern Railroad, Inc. (LSRR).[2]

Applicant states that (1) The rail lines operated by SKO, PRCC, TIBR, SLWC, EIRR, K&O, PSWR, GNR, KRR, MMT, AO, MSRR, YVRR, and LSRR do not connect with the rail lines being leased by ARSR; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines being leased by ARSR with any railroad in the Watco corporate family; and (3) neither ARSR nor any of the carriers controlled by Watco are Class I rail carriers. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of the transaction is to reduce overhead expenses, coordinate billing, maintenance, mechanical and personnel policies and practices of applicant's rail carrier subsidiaries, thereby improving the overall efficiency of rail service provided by the 15 railroads.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve on Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the

[1] Watco owns 100% of the issued and outstanding stock of ARSR.

[2] SKO's lines are located in Missouri, Kansas, and Oklahoma; PRCC's lines are located in Washington, Oregon, and Idaho; TIBR's lines are located in Texas and Louisiana; SLWC's lines are located in Oklahoma: EIRR's lines are located in Idaho; K&O's lines are located in Kansas and Colorado; PSWR's line is located in Pennsylvania; GNR's lines are located in Idaho and Washington; KRR's lines are located in Kansas and Missouri; MMT's lines are located in Montana; AO's lines are located in West Virginia; MSRR's line is located in Mississippi; YVRR's lines are located in Montana; and LSRR's lines are located in Louisiana.

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. 34761, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://WWW.STB.DOT.GOV.*

Decided: October 21, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–21409 Filed 10–25–05; 8:45 am]

BILLING CODE 4915–01–M

DEPARTMENT OF THE TREASURY

Public Meeting of the President's Advisory Panel on Federal Tax Reform

AGENCY: Department of the Treasury.

ACTION: Change in meeting date and time.

SUMMARY: This notice advises all interested persons of a change in the date and time of a public meeting of the President's Advisory Panel on Federal Tax Reform.

DATES: The meeting previously scheduled for Thursday, October 27, 2005, and announced in 70 FR 59394 (October 12, 2005), has been rescheduled for Monday, October 31, 2005. The meeting will be held via teleconference and will begin at 2:30 p.m. Eastern Standard Time. This time may be subject to change. Interested parties will be able to listen to the meeting. Call-in information and updated time information will be posted on the Panel's Web site, *http://www.taxreformpanel.gov.*

FOR FURTHER INFORMATION CONTACT: The Panel staff at (202) 927–2TAX (927–2829) (not a toll-free call) or e-mail info@taxreformpanel.gov (please do not send comments to this box). Additional information is available at *http://www.taxreformpanel.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The October 31 meeting is the thirteenth meeting of the Advisory Panel. Due to exceptional circumstances concerning scheduling, this Notice is being published at this time. At this meeting, the Panel will finalize any remaining matters that may be pending before the Panel.

Comments: Interested parties are invited to call into the teleconference to listen to the meeting; however, no public comments will be heard at the meeting. Any written comments with respect to this meeting may be mailed to The President's Advisory Panel on Federal Tax Reform, 1440 New York Avenue NW., Suite 2100, Washington, DC 20220. All written comments will be made available to the public.

Records: Records are being kept of Advisory Panel proceedings and will be available at the Internal Revenue Service's FOIA Reading Room at 1111 Constitution Avenue, NW., Room 1621, Washington, DC 20024. The Reading Room is open to the public from 9 a.m. to 4 p.m., Monday through Friday except holidays. The public entrance to the reading room is on Pennsylvania Avenue between 10th and 12th streets. The phone number is (202) 622–5164 (not a toll-free number). Advisory Panel documents, including meeting announcements, agendas, and minutes, will also be available on *http://www.taxreformpanel.gov.*

Dated: October 24, 2005.

Mark S. Kaizen,

Designated Federal Officer.

[FR Doc. 05–21475 Filed 10–25–05; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Fiduciary Activities of National Banks—12 CFR part 9.''

DATES: You should submit written comments by December 27, 2005.

ADDRESSES: You should direct your comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0140, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0140, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting OMB approval for a revision to the following information collection:

Title: Fiduciary Activities of National Banks—12 CFR 9.

OMB Number: 1557–0140.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection. The OCC requests only that OMB approve its revised estimate of the burden and extend its approval of the information collection.

Under 12 U.S.C. 92a, the OCC regulates the fiduciary activities of national banks, including the administration of collective investment funds. The requirements in 12 CFR part 9 enable the OCC to perform its responsibilities relating to the fiduciary activities of national banks and collective investment funds. The collections of information in Part 9 are found in 9.8, 9.9(a) and (b), 9.17(a), 9.18(b)(1), 9.18(b)(6)(ii), 9.18(b)(6)(iv), and 9.18(c)(5) as follows:

Section 9.8 requires a national bank to maintain fiduciary records;

Section 9.9(a) and (b) require a national bank to note the results of a fiduciary audit in the minutes of the board of directors;

Section 9.17(a) requires a national bank that wants to surrender its fiduciary powers to file with the OCC a

certified copy of the resolution of its board of directors;

Section 9.18(b)(1) requires a national bank to establish and maintain each collective investment fund in accordance with a written plan;

Section 9.18(b)(1) also requires a national bank to make the plan available for public inspection and to provide a copy of the plan to any person who requests it;

Section 9.18(b)(6)(ii) requires a national bank to prepare a financial report of the fund;

Section 9.18(b)(6)(iv) requires a national bank to disclose the financial report to investors and other interested persons; and

Section 9.18(c)(5) requires a national bank to request OCC approval of special exemption funds.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 580.

Estimated Total Annual Responses: 1,177,492.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 309,825 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 19, 2005.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 05–21352 Filed 10–25–05; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Claims Against the United States for Amounts Due in the Case of a Deceased Creditor

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning ''Claims Against the United States for Amounts Due in the Case of a Deceased Creditor''.

DATES: Written comments should be received on or before December 27, 2005.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kevin McIntyre, Judgment Fund Branch, 3700 East West Highway, Room 630F, Hyattsville, MD 20782, (202) 874–1130.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Claim Against the United States for Amounts Due in the Case of a Deceased Creditor.

OMB Number: 1510–0042.

Form Number: SF–1055.

Abstract: This form is required to determine who is entitled to the funds of a deceased Postal Savings depositor or deceased award holder. The form, with supporting documentation, enables the government to decide who is legally entitled to payment.

Current Actions: Extensions of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 400.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 400.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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.

Dated: October 7, 2005.

Ronald G. Cymbor,

Assistant Commissioner, Financial Operations.

[FR Doc. 05–21323 Filed 10–25–05; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee November 2005; Public Meeting

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces a Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for November 15, 2005.

Date: November 15, 2005.

Time: 1 p.m. to 2 p.m.

Location: The meeting will occur *via teleconference.* Interested members of the public may attend the meeting at the United States Mint; 801 Ninth Street, NW., Washington, DC; 2nd floor.

Subject: Finalize the CCAC's annual report and other business.

Interested persons should call 202–354–7502 for the latest update on meeting time, and location.

Public Law 108–15 Established the CCAC to

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional gold medals, and national and other medals.

• Advise the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.

• Make recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Brendan Adams, United States Mint Liaison to the CCAC; 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: October 19, 2005.

David A. Lebryk,

Acting Director, United States Mint.

[FR Doc. 05–21324 Filed 10–25–05; 8:45 am]

BILLING CODE 4810–37–P

Corrections

Federal Register

Vol. 70, No. 206

Wednesday, October 26, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18612; Airspace Docket No. 04–AWA–05]

RIN 2120–AA66

Modification of the Los Angeles Class B Airspace Area; CA

Correction

In rule document 05–15855 beginning on page 46754 in the issue of Thursday, August 11, 2005, make the following corrections:

§71.1 [Corrected]

1. On page 46756, in §71.1, under the heading **AWP CA B Los Angeles, CA [Revised]**, in Area C., in the second line, ''Lat. 34°57′42″ N.,'' should read ''Lat. 33°57′42″ N.,''.

2. On page 46757, in the same section, under the same heading, in Area E., in the second line, ''Lat. 33°54′00″ N.,'' should read ''Lat. 33°54′04″ N.,''.

3. On the same page, in the same section, under the same heading, in the same Area, the sixth line, ''Lat. 34°02′22″ N., long. 117°59′23″ W.'', should be deleted.

4. On the same page, in the same section, under the same heading, in Area J., in the sixth line, ''Lat. 33°46′56″ N.,'' should read ''Lat. 33°46′40″ N.,''.

[FR Doc. C5–15855 Filed 10–25–05; 8:45 am]

BILLING CODE 1505–01–D

Reader Aids

Federal Register

Vol. 70, No. 206

Wednesday, October 26, 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, OCTOBER

57483–57724 3
57725–57992 4
57993–58290 5
58291–58602 6
58603–58968 7
58969–59208 11
59209–59620 12
59621–59986 13
59987–60202 14
60203–60404 17
60405–60714 18
60715–61024 19
61025–61210 20
61211–61348 21
61349–61546 24
61547–61712 25
61713–61884 26

CFR PARTS AFFECTED DURING OCTOBER

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:
7936 58281
7937 58283
7938 58285
7939 58287
7940 59209
7941 59977
7942 59979
7943 59981
7944 59983
7945 59985
7946 61013
7947 61015
7948 61017
7949 61019
7950 61545

Executive Orders:
11145 (Continued by 13385) 57989
11183 (Continued by 13385) 57989
11287 (Continued by 13385) 57989
12131 (Continued by 13385) 57989
12196 (Continued by 13385) 57989
12216 (Amended by 13385) 57989
12367 (Continued by 13385) 57989
12382 (Continued by 13385) 57989
12473 (Amended by 13387) 60697
12905 (Continued by 13385) 57989
12958 (See 13387).....60697
12978 (See Notice of October 19, 2005).....61209
12994 (Continued by 13385) 57989
13226 (Amended by 13385) 57989
13231 (Continued by 13385) 57989
13237 (Continued by 13385) 57989
13256 (Continued by 13385) 57989
13265 (Continued by 13385) 57989
13270 (Continued by 13385) 57989
13316 (Superseded in part by 13385).....57989
13231 (Amended by 13385) 57989
13283 (Revoked by 13385) 57989
13326 (Revoked by 13385) 57989
13328 (Revoked by 13385) 57989
13369 (Amended by 13386) 58289
13385 57989
13386 58289
13387 60697

Administrative Orders:
Presidential Determinations:
No. 2005–38 of September 26, 2005 60397
No. 2005–39 of September 28, 2005 60399
No. 2005–40 of September 28, 2005 60401
No. 2005–41 of September 29, 2005 60403
Notices:
Notice of October 17, 2005 61023
Notice of October 19, 2005 61209

5 CFR

532 61211
1650 59621
5502 61713

Proposed Rules:
1201 61750

6 CFR

7 61211
13 59209

7 CFR

54 58969
62 58969
205 61217
300 57993
301 .....57993, 61349
302 57993
305 57993
318 57993
319 .....57993, 61351
322 57993
330 57993
340 57993
351 57993
352 57993
353 57993
354 57993
355 57994
360 57993
371 57993

380 57993
915 59622
927 59625
979 57995
981 60405
983 61220
1005 59221
1007 59221
1902 59224
4279 57483
4287 57483
Proposed Rules:
51 61068
301 ....58084, 59280
319 59283
1030 58086
1219 ....59678, 61238
1260 58095
1437 57520

9 CFR

77 ....58291, 61025, 61226
93 57486
327 57725
Proposed Rules:
94 61578

10 CFR

430 ....59122, 60407, 61698
431 ....60407, 61698
Proposed Rules:
430 61395

11 CFR

Proposed Rules:
100 60744

12 CFR

34 59987
204 58603
225 59987
229 60418
323 59987
333 60420
564 59987
620 58293
621 58293
650 58293
651 58293
652 58293
653 58293
654 58293
655 58293
713 61713
722 59987
741 61713
1700 59628
Proposed Rules:
3 61068
208 61068
225 61068
226 60235
307 60015
325 61068
331 60019
362 60019
404 61395
567 61068

13 CFR

126 58974

14 CFR

21 59932
25 ....57726, 57728, 57730, 58605, 59630, 59632, 59635, 59988, 60422
39 ....57487, 57491, 57493, 57732, 57734, 57736, 57739, 57740, 57998, 58000, 58002, 58005, 58007, 58257, 58293, 58295, 58298, 58300, 58303, 58305, 59229, 59231, 59233, 59236, 59237, 59240, 59243, 59244, 59246, 59252, 59256, 59258, 59263, 59266, 59636, 59638, 59640, 59644, 59647, 60203, 60205, 60206, 60211, 61226, 61229, 61547, 61549, 61716, 61720, 61721, 61723, 61727, 61729
71 ....57497, 57498, 57746, 58307, 58308, 58607, 59651, 59652, 59653, 59990, 59992, 60132, 60424, 61026, 61362, 61552, 61733, 61735, 61883
73 58607
95 57499
97 ....57504, 57746, 60715, 61027
119 58796
121 ....58796, 59932
135 ....58796, 59932
145 ....58796, 59932
183 59932
Proposed Rules:
1 58308
25 58308
39 ....57804, 58100, 58103, 58107, 58110, 58352, 58355, 58357, 58358, 58620, 58623, 58626, 58628, 58631, 58634, 60244, 60246, 60453, 60744, 61078, 61239, 61398, 61580
71 ....57805, 61583, 61585, 61586, 61587
91 58508
121 ....58508, 58966, 58967
125 58508
129 58508
135 ....58966, 58967
382 61241
1260 60456

15 CFR

335 61363
340 61363
902 61233
Proposed Rules:
7 59678

16 CFR

Proposed Rules:
Ch. II 60031
23 57807
305 60716

17 CFR

200 61030
Proposed Rules:
1 58985
145 58985
147 58985
241 61700

18 CFR

153 60426
157 60426
375 60426
Proposed Rules:
2 ....58636, 60748
33 ....58636, 60748
131 60456
292 60456

19 CFR

12 ....58009, 61031
102 58009
141 58009
144 58009
146 58009
163 58009

20 CFR

404 61364
416 61364
Proposed Rules:
404 ....58999, 60251, 60463
408 60251
411 60748
416 ....58999, 60251, 60463

21 CFR

1 57505
20 57505
310 58974
341 58974
510 57927
866 57748
886 61736
Proposed Rules:
101 60749
133 60751
589 58570

22 CFR

51 61553
96 59654

24 CFR

983 59892
990 61366
Proposed Rules:
3280 61178
3282 61178
3288 61178

25 CFR

161 58882
Proposed Rules:
517 60470

26 CFR

1 ....57509, 57750, 60132
54 59620
801 60214
Proposed Rules:
1 ....57523, 57807, 57930, 60475
301 ....57523, 60475
801 60256

27 CFR

9 ....59993, 59996

29 CFR

697 57722
1610 57510
2560 59620
2590 59620
4022 60002
4044 60002
Proposed Rules:
404 61400
1910 59290
1926 59290

30 CFR

732 61194
Proposed Rules:
46 57808
48 57808
50 57808
56 57808
57 57808
75 57808
77 57808
117 57524
250 61589
915 60478
936 60481

31 CFR

29 60003

32 CFR

179 58016
199 61368
504 60723
631 60728
Proposed Rules:
505 61589

33 CFR

100 ....58055, 61032, 61034
117 ....58056, 58057, 58059, 58308, 59655, 61380, 61738
165 ....58608, 60004, 61739
Proposed Rules:
165 58646
207 61401

34 CFR

668 61037
674 61037
682 61037
685 61037

36 CFR

1230 58978

37 CFR

201 58310
256 58310
Proposed Rules:
201 57526

38 CFR

Proposed Rules:
5 61326

39 CFR

111 61037
Proposed Rules:
111 60036

40 CFR

3 59848
9 ....59402, 59848, 60134
35 61039
51 ....59582, 59848
52 ....57511, 57750, 58311, 58313, 58321, 58325, 58978, 59657, 60008, 60010, 60735, 60738, 60740, 60741, 61232, 61382, 61384, 61556, 61561, 61563, 61741
60 59848
62 ....57762, 57764, 58328, 61044
63 ....57513, 59402, 59848

69 59848
70 59848
71 59848
80 58330
81 ....59657, 61232, 61563
82 60443
122 60134
123 59848
142 59848
145 59848
162 59848
166 61232
180 59268
233 59848
257 59848
258 59848
260 59402
261 ....57769, 60217
264 59402
265 59402
266 59402
270 59402
271 ....59402, 59848
281 59848
403 ....59848, 60134
501 59848
710 60217
745 59848
763 59848

Proposed Rules:

51 ....59680, 61081
52 ....57531, 58112, 58119, 58138, 58146, 58154, 58167, 59681, 59688, 59690, 60036, 60037, 60769, 61081, 61104, 61402, 61403, 61590, 61750
62 ....57531, 57811, 57812, 58361, 61106
63 ....57534, 61404, 61411, 61417
69 59690
81 59690
158 61242
194 61107
302 57813
355 57813
372 57822
403 60199

41 CFR

60–1 58946
301–10 61046
301–11 60221
301–74 60221

42 CFR

73 61047
405 57785
412 57785
413 57785
415 57785
419 57785
422 57785
431 58260
457 58260
483 58834
485 57785

Proposed Rules:

411 59182
421 58649
1001 59015

43 CFR

3000 58854
3100 58854
3110 58854
3120 58854
3130 58854
3140 58610
3200 58854
3470 58854
3500 58854
3600 58854
3800 58854
3830 58854
3833 58854
3835 58854
3836 58854
3860 58854
3870 58854

Proposed Rules:

4 58167
2560 58654

44 CFR

64 ....61388, 61389
65 ....57786, 57788
67 57791
206 60443

Proposed Rules:

67 ....57848, 57850

45 CFR

Proposed Rules:

302 60038
303 60038
307 60038
Ch. XXV 60257

46 CFR

296 59400

Proposed Rules:

389 60770

47 CFR

1 61049
2 ....61742, 61747
5 59276
15 60742
22 61049
24 61049
25 59276
27 ....58061, 61049
51 60222
63 60222
64 ....59664, 60222, 61747
73 ....59277, 59279, 60742, 61748, 61749
90 61049
97 59276

Proposed Rules:

2 61752
22 60770
24 60770
27 60770
63 60259
64 ....59704, 60259
73 ....59292, 59293, 59294, 59295, 60781

48 CFR

Ch. II 58980
204 58980
215 58980
252 58980
1504 61567
1509 61567
1529 61567
1536 61567
1537 61567
1552 61567

Proposed Rules:

2 60782
4 60782
52 60782
1835 60484
1852 60484

49 CFR

172 59119
192 61571
195 61571
303 58616
387 58065
591 57793
592 57793
594 57793

Proposed Rules:

29 58175
173 61762
180 61762
192 57536
387 61111
393 58657
571 57549

50 CFR

17 ....58335, 59808, 59952, 60658, 60886
222 60013
223 60013
622 57802
648 ....57517, 57802, 58351, 60449, 60450, 61233, 61577
660 ....58066, 59296, 61063, 61235, 61393
679 ....57518, 57803, 58983, 59675, 59676, 60742, 61067

Proposed Rules:

17 ....57851, 58361, 60051, 60608, 61591, 61770
21 ....59710, 60052
622 60058
635 ....58177, 58366
660 ....61595, 61597
679 61775

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 OCTOBER 26, 2005

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Indiana; published 9-26-05

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Commercial mobile radio services—
  - Truth-in-billing and billing format; descriptions and plain language requirements; published 10-26-05

Frequency allocations and radio treaty matters:
- Advanced wireless services; published 10-26-05

HEALTH AND HUMAN SERVICES DEPARTMENT

Supplemental standards of ethical conduct and financial disclosure requirements for department employees; correction; published 10-26-05

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Critical habitat designations—
  - Bull trout; published 9-26-05

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Airbus; published 9-21-05
- BAE Systems (Operations) Ltd.; published 9-21-05
- Boeing; published 9-21-05
- Short Brothers; published 9-21-05

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT

Assistance awards to U.S. non-Governmental organizations; marking requirements; Open for comments until further notice; published 8-26-05 [FR 05-16698]

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:
- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Fresh fruit and vegetable terminal market inspection services; fee revisions; comments due by 11-3-05; published 10-20-05 [FR 05-20961]

Melons grown in—
- South Texas; comments due by 11-4-05; published 10-5-05 [FR 05-20088]

Oranges and grapefruit grown in—
- Texas; comments due by 10-31-05; published 8-31-05 [FR 05-17321]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:
- Noninsured Crop Disaster Assistance Program; tropical regions; comments due by 11-2-05; published 10-3-05 [FR 05-19671]

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]

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Meetings; Sunshine Act; Open for comments until further notice; published 10-4-05 [FR 05-20022]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 11-4-05; published 10-5-05 [FR 05-19986]

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:
- Contractor personnel interacting with detainees; training; comments due by 10-31-05; published 9-1-05 [FR 05-17347]
- Contractors; levy on payment; comments due by 10-31-05; published 9-1-05 [FR 05-17349]
- Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

Civilian health and medical program of uniformed services (CHAMPUS):
- TRICARE program—
  - TRICARE Dental Program; participating providers reimbursement rate; revision; comments due by 10-31-05; published 8-31-05 [FR 05-17299]

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]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Integrated iron and steel manufacturing; comments due by 10-31-05; published 8-30-05 [FR 05-17193]
- Secondary aluminum production; correction; comments due by 11-2-05; published 10-3-05 [FR 05-19714]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Missouri; comments due by 11-2-05; published 10-3-05 [FR 05-19711]
- New Mexico; comments due by 11-3-05; published 10-4-05 [FR 05-19877]
- North Carolina; comments due by 10-31-05; published 9-29-05 [FR 05-19351]

Air quality implementation plans; approval and promulgation; various States:
- Oklahoma; comments due by 11-3-05; published 10-4-05 [FR 05-19837]
- Texas; comments due by 11-4-05; published 10-5-05 [FR 05-19994]

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]

Hazardous waste program authorizations:
- Montana; comments due by 10-31-05; published 9-30-05 [FR 05-19617]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Flonicamid; comments due by 10-31-05; published 8-31-05 [FR 05-17128]
- Halosulfuron-methyl; comments due by 10-31-05; published 8-31-05 [FR 05-17204]
- Lactic acid, 2-ethylhexyl ester; comments due by 10-31-05; published 8-31-05 [FR 05-17360]
- Methoxyfenozide; comments due by 10-31-05; published 8-31-05 [FR 05-17131]
- S-metolachlor; comments due by 10-31-05;

published 8-31-05 [FR 05-17367]
Superfund program:
National oil and hazardous substances contingency plan priorities list; comments due by 10-31-05; published 9-30-05 [FR 05-19613]
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]
Radio services, special:
Amateur services—
Telegraphy examination requirement; comments due by 10-31-05; published 8-31-05 [FR 05-17226]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicaid and State Children's Health Insurance Program:
Payment error rate measurement; comments due by 11-4-05; published 10-5-05 [FR 05-19910]
Medicare:
Physicians' services and certain items; prior determination of coverage; comments due by 10-31-05; published 8-30-05 [FR 05-17175]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Drug approvals; circumstances under which an active ingredient may be marketed in both prescription and over-the-counter products; comments due by 11-1-05; published 9-1-05 [FR 05-17390]
Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
Medical devices—
Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT
Customs and Border Protection Bureau
Intelligence Reform and Terrorism Prevention Act of 2004; implementation:
Travel within Western Hemisphere; documents required; comments due by 10-31-05; published 9-1-05 [FR 05-17533]
Organization and functions; field organization, ports of entry, etc.:
Sacramento, CA, port establishment; San Francisco, CA, port limits realignment; comments due by 11-1-05; published 9-2-05 [FR 05-17536]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]
Drawbridge operations:
Louisiana; comments due by 11-1-05; published 9-2-05 [FR 05-17510]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Homeless assistance; excess and surplus Federal properties; Open for comments until further notice; published 8-5-05 [FR 05-15251]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species permit applications
Recovery plans—
Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]
Endangered and threatened species:
Findings on petitions, etc.—
Yellowstone cutthroat trout; comments due by 10-31-05; published 9-1-05 [FR 05-17455]
Picture-wing flies (12 species) from Hawaiian Islands; comments due by 11-3-05; published 10-4-05 [FR 05-19594]
Importation, exportation, and transportation of wildlife:
Injurious wildlife—
Black carp; comments due by 10-31-05; published 8-30-05 [FR 05-17173]
Refuge-specific public use regulations:
Kodiak National Wildlife Refuge, AK; comments due by 10-31-05; published 9-30-05 [FR 05-19570]

LABOR DEPARTMENT
Employee Benefits Security Administration
Employee Retirement Income Security Act:
Annual reports; electronic filing requirements; comments due by 10-31-05; published 8-30-05 [FR 05-17185]

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]

OFFICE OF MANAGEMENT AND BUDGET
Management and Budget Office
Grants, other financial assistance, and nonprocurement agreements; governmentwide guidance:
Governmentwide debarment and suspension (nonprocurement); Federal agency guidance; comments due by 10-31-05; published 8-31-05 [FR 05-16647]

POSTAL SERVICE
Domestic Mail Manual:
Preparation standards for bundles of mail on pallets; comments due by 10-31-05; published 9-30-05 [FR 05-19531]

SECURITIES AND EXCHANGE COMMISSION
Securities, etc.:
Sarbanes-Oxley Act of 2002; implementation—
Exchange Act periodic reports; inclusion of management's report on internal control over financial reporting and certification disclosure; comments due by 10-31-05; published 9-29-05 [FR 05-19426]
Securities:
Annual and quarterly reports; accelerated filer definition and accelerated filing deadlines; comments due by 10-31-05; published 9-29-05 [FR 05-19427]

SMALL BUSINESS ADMINISTRATION
Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]
HUBZone program:
Government contracting, 8(a) business development, and small business size standard programs; comments due by 10-31-05; published 8-30-05 [FR 05-17206]

STATE DEPARTMENT
Intelligence Reform and Terrorism Prevention Act of 2004; implementation:
Travel within Western Hemisphere; documents required; comments due by 10-31-05; published 9-1-05 [FR 05-17533]

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

Debarment and suspension (nonprocurement); governmentwide requirements; comments due by 11-4-05; published 10-5-05 [FR 05-19965]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:

Washington, DC, metropolitan special flight rules area; certain aircraft operations flight restrictions; comments due by 11-2-05; published 8-4-05 [FR 05-15375]

Correction; comments due by 11-2-05; published 8-24-05 [FR 05-16781]

Airworthiness directives:

Boeing; comments due by 10-31-05; published 9-15-05 [FR 05-18319]

Dassault; comments due by 10-31-05; published 9-30-05 [FR 05-19566]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 10-31-05; published 9-29-05 [FR 05-19238]

General Electric Co.; comments due by 10-31-05; published 9-1-05 [FR 05-17400]

McDonnell Douglas; comments due by 10-31-05; published 9-16-05 [FR 05-18401]

Sabreliner; comments due by 10-31-05; published 9-14-05 [FR 05-18209]

Airworthiness standards:

Special conditions—

Boeing Model 720B high intensity radiated fields; comments due by 11-3-05; published 10-4-05 [FR 05-19858]

Dassault-Aviation Mystere-Falcon 50 airplanes; comments due by 11-3-05; published 10-4-05 [FR 05-19860]

Raytheon Model BH125 Series 400A and 600A airplanes; comments due by 11-3-05; published 10-4-05 [FR 05-19859]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Child restraint systems—

Booster seats and restraints for children weighing more than 50 lbs.; comments due by 10-31-05; published 8-31-05 [FR 05-17218]

Motor homes and travel trailers over 10,000 pounds; cargo carrying capacity; comments due by 10-31-05; published 8-31-05 [FR 05-17245]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Simplified service cost method and simplified production method; cross-reference; comments due by 11-1-05; published 8-3-05 [FR 05-15362]

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. 3971/P.L. 109–91

QI, TMA, and Abstinence Programs Extension and Hurricane Katrina Unemployment Relief Act of 2005 (Oct. 20, 2005; 119 Stat. 2091)

Last List October 20, 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.