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Federal Register

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

RIN 0584–AD56

Child and Adult Care Food Program: Age Limits for Children Receiving Meals in Emergency Shelters

AGENCY: Food and Nutrition Service, USDA

ACTION: Interim rule.

SUMMARY: This interim rule amends the Child and Adult Care Food Program (CACFP) regulations to implement a provision of the Child Nutrition and WIC Reauthorization Act of 2004, which raised the age limit for residents of emergency shelters who are eligible to receive CACFP meals to include children through age 18. This rule also extends eligibility for participation to emergency shelters that primarily serve children through age 18 who are homeless and seeking shelter without their families. These changes are expected to increase the number of emergency shelters that will be eligible to participate in CACFP as well as the number of homeless children that will have access to free, nutritious meals.

DATES: *Effective Date:* February 2, 2006.

Comment Date: To be assured of consideration, comments must be postmarked on or before March 6, 2006.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this interim rule. Comments may be submitted by any of the following methods:

- Mail: Send comments to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Room 640, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302–1594. All submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.–5 p.m.
- Fax: Submit comments by facsimile transmission to: (703) 305–2879. Please address your comments to Mr. Eadie and identify your comments as "CACFP: Age Limits for Children in Emergency Shelters".
- E-Mail: Send comments to *CNDProposal@fns.usda.gov*. Please identify your comments as "CACFP: Age Limits for Children in Emergency Shelters".
- Hand Delivery or Courier: Deliver comments to 3101 Park Center Drive, Room 634, Alexandria, Virginia 22301–1594, during normal business hours of 8:30 a.m.–5 p.m.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Keith Churchill, at telephone number (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

How Does the Child and Adult Care Food Program (CACFP) Help Children Who Are Homeless?

Homeless children residing in eligible emergency shelters have been able to receive free meals and snacks through the CACFP since July 1, 1999, when a provision of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336) became effective. Under Public Law 105–336, the CACFP benefit was limited to children age 12 and younger, migrant workers' children age 15 and younger, and disabled children.

How Do Emergency Shelters Participate in CACFP?

Public Law 105–336 established requirements for emergency shelters by adding a new section 17(t) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1766(t). Emergency shelters approved under these provisions must:

- Meet the definition of emergency shelter contained in the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11351);
- Comply with applicable State or local health and safety codes;
- Serve meals that meet the USDA's nutritional standards; and
- Claim reimbursement only for meals served to eligible residential children.

What Types of Emergency Shelters Are Eligible to Participate in CACFP?

The Food and Nutrition Service (FNS) issued guidance on March 30, 1999 requiring that to participate in CACFP emergency shelters must either:

- Provide temporary residence to families with children; or
- Sponsor a temporary residential site for children and their parents or guardians.

This policy has targeted CACFP benefits to shelters that support at-risk homeless children as part of a family unit. Examples of eligible emergency shelters include family shelters and shelters for battered women. On March 14, 2000, FNS provided additional guidance clarifying that residential child care institutions (RCCIs) may also participate in CACFP if they operate a separate program for homeless families with children.

In 2002, FNS added a definition of *Emergency shelter* to § 226.2 of the CACFP regulations. This definition was included in an interim rule entitled, "Implementing Legislative Reforms to Strengthen Program Integrity", published in the **Federal Register** on June 27, 2002 (67 FR 43448). Based on this definition, a public or private nonprofit organization qualifies as an emergency shelter for purposes of Program participation if its primary purpose is to provide temporary housing and food services to homeless families with children. No comments were received on this definition.

What Did the Most Recent Legislation Change About the Age Limits for Children Residing in Emergency Shelters?

A provision of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265) extended the age limit, from 12 to 18, for residents of emergency shelters to be eligible to receive CACFP meals. Specifically, section 119(g) of Public Law 108–265 amended section 17(t)(5)(A) of the NSLA to remove the age limitations on residents of emergency shelters (15 years for children of migrant workers and 12 years for all other children) and extend the age limit for all children not more than 18 years. This provision was effective on October 1, 2004, pursuant to

section 502(b)(2) of Public Law 108–265.

What Guidance Has USDA Provided on This Change?

FNS notified CACFP State agencies of the change in writing on August 10, 2004. We explained to State agencies that the recent legislation raised the age limit, from 12 to 18, for residents of emergency shelters who would be eligible to receive CACFP meals.

How Does This Rule Implement the Change in Age Limits?

This interim rule revises the definition of *Children* in § 226.2 of the CACFP regulations to specify that eligible participants in emergency shelters includes residents through age 18 and residents of any age with disabilities as defined by the State agency.

Does This Rule Make Changes to the Types of Emergency Shelters That May Participate in the CACFP?

Yes. This interim rule revises the definition of *Emergency shelter* at § 226.2 of the CACFP regulations to:

- Extend eligibility to emergency shelters that provide temporary shelter and food services to unaccompanied children through age 18 by removing the reference to homeless families;
- Remove the condition that the primary purpose of the emergency shelter must be the provision of temporary shelter and food services;
- Clarify that the sites of otherwise eligible public or private nonprofit organizations may participate as emergency shelters if the sites provide temporary shelter and food services to homeless children; and
- Specify that a RCCI may participate in CACFP as an emergency shelter only if it serves a distinct group of homeless children who are not enrolled in the RCCI's regular program.

Under this revised definition, an otherwise eligible public or private nonprofit organization or its site may participate as an emergency shelter if it provides temporary housing and food services to homeless children, with or without their families. A RCCI may participate if it provides temporary shelter and food services to homeless children who are not enrolled in its regular program.

Why is USDA Making These Changes?

We are extending program eligibility to emergency shelters that serve unaccompanied children to ensure that CACFP meal benefits are available to children, including adolescents who may be alone and seeking shelter. The extension of CACFP meal benefits to residents through age 18 in emergency shelters by Public Law 108–265 focuses attention on homeless youth between 13 and 18 years old. In contrast to younger children, older youth are more likely to seek temporary shelter without their families. Also, we recognize that there may be emergency shelters serving children and youth that have multiple purposes. We have removed, therefore, the requirement that the primary purpose of an eligible emergency shelter must be the provision of temporary shelter and food services.

The addition of the word "site" revises the current definition of emergency shelter to clarify the eligibility of emergency shelter sites, as mandated by section 17(t)(1)(B) of the NSLA (42 U.S.C.1766(t)(1)(B)). This revision codifies current policy. Sites of emergency shelters meeting the definition of the McKinney-Vento Homeless Assistance Act as codified at 42 U.S.C. 11351, have been eligible to participate in CACFP since 1999. Within current CACFP requirements, the private, nonprofit organization that is sponsoring an emergency shelter site must apply to participate in the CACFP as a sponsoring organization, subject to all of the provisions governing the participation of sponsoring organizations described throughout the CACFP regulations, especially in §§ 226.15 and 226.16. An example of this type of arrangement would be a multi-purpose private nonprofit organization, like The Salvation Army, which provides many community services including the sponsorship of an emergency shelter for homeless children. In this situation, The Salvation Army would need to apply to participate as a sponsoring organization of the emergency shelter facility.

Finally, we stipulate that a RCCI may participate as an emergency shelter if it serves a distinct group of children who are homeless and are not enrolled in its regular program. Our intention in making this revision to the definition is to codify CACFP policy on RCCI participation that was first outlined in our March 14, 2000 guidance.

Why is RCCI Participation in CACFP Restricted?

RCCIs provide residential care and other services for children with specific needs, often on a long-term basis. RCCIs are designated as schools in section 12(d)(5) of the NSLA (42 U.S.C. 1760(d)(5)). For this reason, meal benefits for RCCI residents are provided through the school nutrition programs if the RCCI meets the definition of *School* in § 210.2 of the National School Lunch Program (NSLP) regulations. Examples of RCCIs that may participate in the NSLP include homes for the mentally, emotionally or physically impaired, homes for unmarried mothers and their infants, halfway houses, orphanages, temporary shelters for abused and runaway children, long-term care facilities for chronically ill children, and juvenile detention centers.

Some of these RCCIs may also be eligible to participate in CACFP if they meet the definition of *Emergency shelter* in this interim rule. Given the purpose and structure of most RCCIs, it is unlikely that many will qualify for CACFP participation as emergency shelters based on their regular program and curriculum. However, RCCIs that operate emergency shelter sites for homeless children may be eligible, provided that the sites, including sites that are co-located within the RCCI facility, serve a distinct group of children who are not enrolled in the RCCI's regular program.

Due to the variety of services offered by organizations providing residential or short-term care for children in need, we are interested in receiving comments from the public on the revised definition of *Emergency shelter*.

Are Shelters for Runaways Eligible to Participate in CACFP?

Yes, provided that runaway shelters meet the revised definition for *Emergency shelter* contained in this rule, as determined by the CACFP State agency, they may participate in CACFP. An eligible shelter or its site for runaway youth must provide temporary housing and food services to children 18 years of age and younger. A shelter that provides a program of structured care on a long-term basis would be classified as a RCCI and would generally be eligible to participate in the school nutrition programs; a runaway shelter of this type could participate in CACFP only if, in addition to its other activities, it provides temporary housing and food services to a distinct group of children who are not part of its regular program of care.

How Will These Changes Affect Emergency Shelters?

Participating emergency shelters will benefit from the increased level of reimbursement received for meals served to children from ages 13 through 18. This change should help to make their operation of CACFP more efficient, while allowing them to serve more meals that would be eligible for reimbursement. In addition, emergency shelters and sites providing temporary shelter and food services to

unaccompanied homeless children will now be eligible to participate in CACFP.

Emergency shelters must ensure that they claim reimbursement only for meals that meet the requirements for meals in § 226.20, including the meal patterns for children and adult participants. To improve the nutrition and satisfy the hunger of adolescent boys and girls, emergency shelters may need to serve additional foods and larger portions to children ages 13 through 18. The CACFP reimbursement received by emergency shelters for these meals must be used exclusively to support the nonprofit food service programs operated for children.

How Will These Changes Affect State Agencies?

The impact of these changes on State agencies administering CACFP should be minimal. State agencies have already provided information to emergency shelters about claiming meals for children age 13 through age 18. The revised definition of *Emergency shelter* may encourage organizations that provide services to unaccompanied homeless youth, such as shelters for runaways, to apply for Program participation. As a result, State agencies may experience an increase in workload associated with approving applications, providing technical assistance, and conducting monitoring of newly eligible emergency shelters.

Does This Rule Make Any Other Changes to the CACFP Regulations?

Yes. This rule updates the CACFP regulations to add emergency shelters to the definitions of *Center*, *Child care facility*, *Free meal*, *Independent center*, and *Sponsoring organization*. The rule also makes a number of technical revisions to the regulations to ensure that emergency shelters are included and/or excluded in program requirements, as appropriate. These revisions include:

- In § 226.4, a new paragraph specifies that emergency shelters must be reimbursed at the free rates for meals and snacks served;
- In § 226.6, paragraph (d) is revised to specify that emergency shelters are exempt from licensing or approval requirements for child care centers but must meet applicable State or local health and safety requirements (note: the exemption from licensing/approval and compliance with health and safety standards are mandated by the NSLA, 42 U.S.C. 1766(t)(3) and (4));
- In §§ 226.7 and 226.9, emergency shelters and sponsoring organizations of emergency shelters are excluded from the requirement to submit information about participants' income or eligibility for free, reduced price, or paid meals that the State agency uses to assign reimbursement rates to centers;
- In § 226.11, emergency shelters are included in the requirement that State agencies may only reimburse centers for meal types specified in the program agreement;
- In § 226.15, emergency shelters are excluded from the requirements to submit enrollment information of participants and from the requirements of determining their eligibility for free, reduced price, or paid meals and snacks;
- In § 226.16, emergency shelters are added to the list of facilities that may be subject to a separate agreement and are included in the list of centers that must receive program payments from the sponsoring organization within five working days of receipt; and
- In § 226.23, revisions are made to clarify that institutions that elect not to charge separately for meals, such as emergency shelters and sponsoring organizations of emergency shelters, do not have to include the income eligibility guidelines in media releases advertising free Program meals.

II. Procedural Matters

Executive Order 12866

This rule has been determined to be not significant and therefore was not reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Roberto Salazar, FNS Administrator, has certified that this rule does not have a significant impact on a substantial number of small entities. It affects public and private nonprofit organizations or their sites that provide temporary housing and food services to children by allowing them to claim reimbursement for the meals and snacks they serve to all resident children, birth through age 18. FNS does not anticipate any significant negative fiscal impact resulting from the implementation of this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. Under section 202 of the UMRA, FNS generally prepares a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates of $100 million or more in any one year (under regulatory provisions of Title II of the UMRA), for State, local, or tribal governments, or for the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The CACFP is listed in the Catalog of Federal Domestic Assistance under No. 10.558. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This interim rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions, or which otherwise impede its full implementation. This rule does not have retroactive effect unless so

specified in the **DATES** section of this preamble. Prior to any judicial challenge to the provisions of this interim rule or the application of the provisions, all applicable administrative procedures must be exhausted. In CACFP, the administrative procedures are set forth at 7 CFR 226.6(k), which establishes appeal procedures; and 7 CFR 226.22 and 7 CFR 3016 and 3019, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

Civil Rights Impact Analysis

FNS has reviewed this interim rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis" to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that there is no negative effect on these groups. All data available to FNS indicate that protected individuals have the same opportunity to participate in CACFP as non-protected individuals. Regulations at § 226.6(b)(4) require that CACFP institutions agree to operate the program in compliance with applicable Federal civil rights laws, including Title VI of the Civil Rights Act of 1964, Title IX of the Education amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and USDA's nondiscrimination regulations under 7 CFR parts 15, 15a, and 15b. At 7 CFR 226.6(m)(1), State agencies are required to monitor CACFP institution compliance with these laws and regulations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Public Participation

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). This rule implements through amendments to current program regulations a nondiscretionary provision mandated by the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265). Additional regulatory changes complement these legislatively-driven amendments. For that reason, we seek public comment on all of the changes made pursuant to this interim rule. Thus, the Department has determined in accordance with 5 U.S.C. 553(b) that Notice of Proposed Rulemaking and Opportunity for Public Comments is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(d), finds that good cause exists for making this action effective without prior public comment.

List of Subjects in 7 CFR Part 226

Accounting, Aged, Day care, Food Assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

■ Accordingly, 7 CFR part 226 is amended as follows:

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 2. In § 226.2:

■ a. Amend the definition of "CACFP child care standards" by removing the words "§ 226.6(d)(2) and (3)" and adding in their place the words "§ 226.6(d)(3) and (4)";

■ b. Revise the definitions of "Center", "Children", and "Emergency shelter";

■ c. Amend the definition of "Child care facility" by adding the words "emergency shelter," after the words "day care home,";

■ d. Amend the definition of "Free meal" by adding in the first sentence the phrase "or to a child who is receiving temporary housing and meal services from an approved emergency shelter;" after the phrase, "a child who is a Head Start participant;"; and

■ e. Amend the definition of "Independent center" by adding the words "emergency shelter," after the words "child care center,".

■ f. Revise the first sentence of the definition of "Sponsoring organization";

The revisions read as follows:

§ 226.2 Definitions.

* * * * *

Center means a child care center, an adult day care center, an emergency shelter, or an outside-school-hours care center.

* * * * *

Children means:

(a) Persons age 12 and under;

(b) Persons age 15 and under who are children of migrant workers;

(c) Persons age 18 and under who are residents of emergency shelters; and

(d) Persons with mental or physical handicaps, as defined by the State, which are enrolled in an institution or a child care facility or residing in an emergency shelter serving a majority of persons 18 years of age and under.

* * * * *

Emergency shelter means a public or private nonprofit organization or its site that provides temporary shelter and food services to homeless children, including a residential child care institution (RCCI) that serves a distinct group of homeless children who are not enrolled in the RCCI's regular program.

* * * * *

Sponsoring organization means a public or nonprofit private organization that is entirely responsible for the administration of the food program in: (a) One or more day care homes; (b) a child care center, emergency shelter, outside-school-hours care center, or adult day care center which is a legally distinct entity from the sponsoring organization; (c) two or more child care centers, emergency shelters, outside-school-hours care centers, or adult day care centers; or (d) any combination of child care centers, emergency shelters, adult day care centers, day care homes, and outside-school-hours care centers.

* * *

* * * * *

■ 3. In § 226.4:

■ a. Revise paragraph (a);

■ b. Redesignate paragraphs (c) through (j) as paragraphs (d) through (k), respectively, and add a new paragraph (c); and

■ c. Revise the first sentence of newly redesignated paragraph (h)(2).

The revisions and addition read as follows:

§ 226.4 Payments to States and use of funds.

(a) *Availability of funds.* For each fiscal year based on funds provided to the Department, FNS must make funds available to each State agency to

reimburse institutions for their costs in connection with food service operations, including administrative expenses, under this part. Funds must be made available in an amount no less than the sum of the totals obtained under paragraphs (b), (c), (d), (e), (f), and (i) of this section. However, in any fiscal year, the aggregate amount of assistance provided to a State under this part must not exceed the sum of the Federal funds provided by the State to participating institutions within the State for that fiscal year and any funds used by the State under paragraphs (i) and (k) of this section.

* * * * *

(c) *Emergency shelter funds.* For meals and snacks served to children in emergency shelters, funds will be made available to each State agency in an amount equal to the total calculated by multiplying the number of meals and snacks served in the Program within the State to such children by the national average payment rate for free meals and free snacks under section 11 of the National School Lunch Act.

* * * * *

(h) * * *

(1) * * *

(2) The rates for meals, including snacks, served in child care centers, emergency shelters, adult day care centers, and outside-school-hours care centers will be adjusted annually, on July 1, on the basis of changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Department of Labor. * * *

* * * * *

■ 4. In § 226.6:

■ a. Revise the heading of paragraph (d) and add a new second sentence to the introductory text;

■ b. Redesignate paragraphs (d)(2) and (d)(3) as paragraphs (d)(3) and (d)(4), respectively, and add a new paragraph (d)(2); and

■ c. Amend newly redesignated (d)(3)(i) by removing the reference "(d)(3)" and adding in its place the reference "(d)(4)".

The revision and additions read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(d) *Licensing/approval for institutions or facilities providing child care.* * * * Emergency shelters are exempt from licensing/approval requirements contained in this section but must meet the requirements of paragraph (d)(2) to be eligible to participate in the Program. * * *

* * * * *

(2) *Health and safety requirements for emergency shelters.* To be eligible to participate in the Program, emergency shelters must meet applicable State or local health and safety standards.

* * * * *

■ 5. In § 226.7, revise paragraph (f) to read as follows:

§ 226.7 State agency responsibilities for financial management.

* * * * *

(f) *Rate assignment.* Each State agency must require institutions (other than emergency shelters and sponsoring organizations of emergency shelters or day care homes) to submit, not less frequently than annually, information necessary to assign rates of reimbursement as outlined in § 226.9.

* * * * *

§ 226.8 [Amended]

■ 6. In § 226.8, remove the reference "§ 226.4(h)" in the first sentence of paragraph (b), the first sentence of paragraph (c), and the first and second sentences of paragraph (d), and add in its place the reference "§ 226.4(i)".

■ 7. In § 226.9:

■ a. Add a new second sentence in paragraph (a);

■ b. Revise paragraph (b) introductory text; and

■ c. Revise paragraph (b)(2).

The addition and revisions read as follows:

§ 226.9 Assignment of rates of reimbursement for centers.

(a) * * * However, only free rates for meals and snacks as described in § 226.4(i)(2) must be assigned for emergency shelters. * * *

(b) Except for emergency shelters, the State agency shall either:

* * * * *

(2) Establish claiming percentages, not less frequently than annually, for each institution on the basis of the number of enrolled participants eligible for free, reduced price, and paid meals. Children who only participate in emergency shelters must not be considered to be enrolled participants for the purpose of establishing claiming percentages; or

* * * * *

§ 226.11 [Amended]

■ 8. In § 226.11, amend the first sentence of paragraph (a) by adding the words ", emergency shelters," after the words "adult day care centers".

■ 9. In § 226.15, revise the first two sentences of paragraph (e)(2) to read as follows:

§ 226.15 Institution provisions.

* * * * *

(e) * * *

(2) Documentation of the enrollment of each participant at centers (except for outside-school-hours care centers and emergency shelters). All types of centers, except for emergency shelters, must maintain information used to determine eligibility for free or reduced price meals in accordance with § 226.23(e)(1). * * *

* * * * *

§ 226.16 [Amended]

■ 10. In § 226.16:

■ a. Amend paragraph (f) by adding the words "emergency shelters," after the words "adult day care centers,"; and

■ b. Amend the first sentence of paragraph (h) by adding the words ", emergency shelters," after the words "adult day care centers".

■ 11. In § 226.23:

■ a. Revise the second sentence of paragraph (d); and

■ b. Amend the first sentence of paragraph (e)(1)(i) by adding the words "(other than emergency shelters)"" after the word "institutions".

The revision reads as follows:

§ 226.23 Free and reduced-price meals.

* * * * *

(d) * * * All media releases issued by institutions, except for sponsoring organizations of day care homes, emergency shelters, and other institutions that elect not to charge separately for meals, shall include the Secretary's Income Eligibility Guidelines for Free and Reduced-Price Meals. * * *

* * * * *

Dated: December 23, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 05–24683 Filed 12–30–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal

drug application (NADA) filed by Elanco Animal Health. The supplemental NADA revises the description of growing cattle fed monensin Type C medicated feeds for increased rate of weight gain and for prevention and control of coccidiosis.

DATES: This rule is effective January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *edubbin@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 95–735 that provides for the use of RUMENSIN 80 (monensin sodium) Type A medicated article. The supplemental NADA revises the description of growing cattle fed monensin Type C medicated feeds for increased rate of weight gain and for prevention and control of coccidiosis. The supplemental NADA is approved as of November 18, 2005, and the regulations in 21 CFR 558.355 are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) 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.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.355, in paragraph (f)(3)(iii)(*b*), remove "Feed to pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers).";

and revise paragraphs (f)(3)(iii)(*a*), (f)(3)(x)(*a*), and (f)(3)(x)(*c*) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(*a*) *Indications for use.* Growing cattle on pasture or in dry lot (stocker and feeder cattle and dairy and beef replacement heifers): For increased rate of weight gain; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*.

* * * * *

(x) * * *

(*a*) *Indications for use.* Growing cattle on pasture or in dry lot (stocker and feeder cattle and dairy and beef replacement heifers): For increased rate of weight gain; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*.

* * * * *

(*c*) *Limitations.* Feed at a rate of 50 to 200 milligrams per head per day. During the first 5 days of feeding, cattle should receive no more than 100 milligrams per day. Do not feed additional salt or minerals. Do not mix with grain or other feeds. Monensin is toxic to cattle when consumed at higher than approved levels. Stressed and/or feed- and/or water-deprived cattle should be adapted to the pasture and to unmedicated mineral supplement before using the monensin mineral supplement. The product's effectiveness in cull cows and bulls has not been established. Consumption by unapproved species may result in toxic reactions.

* * * * *

Dated: December 14, 2005.

Stephen D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 05–24671 Filed 12–30–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9237]

RIN 1545–BE05

Designated Roth Contributions to Cash or Deferred Arrangements Under Section 401(k)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the regulations under section 401(k) and (m) of the Internal Revenue Code. These regulations provide guidance concerning the requirements for designated Roth contributions under qualified cash or deferred arrangements described in section 401(k). These regulations affect section 401(k) plans that provide for designated Roth contributions and participants eligible to make elective contributions under these plans.

DATES: Effective Date: These regulations are effective January 1, 2006. Applicability Date: These regulations apply to plan years beginning on or after January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Cathy A. Vohs, 202–622–6090 or R. Lisa Mojiri-Azad, 202–622–6060 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1930.

The collection of information in these regulations is in 26 CFR 1.401(k)–1(f)(1)&(2). This information is required to comply with the separate accounting and recordkeeping requirements of section 402A.

The estimated annual burden per respondent under control number 1545–1930 is 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of

Information and Regulatory Affairs, Washington, DC 20503.

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 control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 401(k) and (m) of the Internal Revenue Code of 1986 (Code). The amendments provide guidance on designated Roth contributions under section 402A of the Code, added by section 617(a) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. 107–16, 115 Stat. 38) (EGTRRA).

Section 401(k) provides that a profit-sharing, stock bonus, pre-ERISA money purchase or rural cooperative plan will not fail to qualify under section 401(a) merely because it contains a qualified cash or deferred arrangement. Contributions made at the election of an employee under a qualified cash or deferred arrangement are known as elective contributions. Generally, such elective contributions are not includible in gross income at the time contributed and are sometimes referred to as pre-tax elective contributions.

Under section 402A, effective for tax years beginning on or after January 1, 2006, a plan may permit an employee who makes elective contributions under a qualified cash or deferred arrangement to designate some or all of those contributions as designated Roth contributions. Designated Roth contributions are elective contributions under a qualified cash or deferred arrangement that, unlike pre-tax elective contributions, are currently includible in gross income. However, a qualified distribution of designated Roth contributions is excludable from gross income.

Although designated Roth contributions under a qualified cash or deferred arrangement bear some similarity to contributions to a Roth IRA described in section 408A (*e.g.*, contributions to either type of account are after-tax contributions and qualified distributions from either type of account are excludable from gross income), there are many differences between these types of arrangements. For example, under section 408A(c)(3), an individual is ineligible to make Roth IRA contributions if his or her modified adjusted gross income exceeds certain limits, but section 402A does not impose any comparable income limits on an individual's eligibility to make designated Roth contributions under a qualified cash or deferred arrangement. In addition, under section 408A(d)(3), a traditional IRA may be converted to a Roth IRA, but section 402A does not provide for a conversion of a pre-tax elective contribution account under a qualified cash or deferred arrangement to a designated Roth account. Also, under section 408A(d)(4), specific ordering rules apply to distributions from Roth IRAs. Section 402A, however, does not provide a specific ordering rule for distributions from designated Roth accounts, so section 72 applies to determine the character of distributions from such accounts.

On December 29, 2004, final regulations under section 401(k) were issued (69 FR 78144). Those regulations generally apply to plan years beginning on or after January 1, 2006, although they also may be applied to plan years ending after December 29, 2004. Under those final regulations, § 1.401(k)–1(f) was reserved for special rules for designated Roth contributions. On March 2, 2005, proposed regulations to fill in that reserved paragraph and provide additional rules applicable to designated Roth contributions were issued (70 FR 10062). Written public comments were received on the proposed regulations and public reaction to the proposed regulations generally was favorable. After consideration of the comments, these final regulations adopt the provisions of the proposed regulations with certain modifications, the most significant of which are highlighted below.

Explanation of Provisions

Rules Relating to Designated Roth Contributions

These final regulations retain the special rules which were included in the proposed regulations relating to designated Roth contributions under a section 401(k) plan. Thus, these final regulations amend § 1.401(k)–1(f) to provide a definition of designated Roth contributions and special rules with respect to such contributions. Under these final regulations, designated Roth contributions are defined as elective contributions under a qualified cash or deferred arrangement that are: (1) Designated irrevocably by the employee at the time of the cash or deferred election as designated Roth contributions that are being made in lieu of all or a portion of the pre-tax elective contributions the employee is otherwise eligible to make under the plan; (2) treated by the employer as includible in the employee's gross income at the time the employee would have received the contribution amounts in cash if the employee had not made the cash or deferred election (*e.g.*, by treating the contributions as wages subject to applicable withholding requirements); and (3) maintained by the plan in a separate account. The regulations also provide that elective contributions may only be treated as designated Roth contributions to the extent permitted under the plan.

Some commentators requested that an employer sponsoring a qualified cash or deferred arrangement be permitted to offer only designated Roth contributions. However, under section 402A(b)(1), designated Roth contributions are made in lieu of all or a portion of elective contributions that the employee is otherwise eligible to make under the cash or deferred arrangement. If a cash or deferred arrangement offered only designated Roth contributions, an employee participating in the arrangement would not be electing to make such contributions in lieu of elective contributions he or she was otherwise eligible to make under the plan. Thus, these final regulations clarify that, in order to provide for designated Roth contributions, a qualified cash or deferred arrangement must also offer pre-tax elective contributions.

Separate Accounting Requirement

These final regulations also retain the rule that, under the separate accounting requirement, contributions and withdrawals of designated Roth contributions must be credited and debited to a designated Roth account maintained for the employee and the plan must maintain a record of the employee's investment in the contract (*i.e.*, designated Roth contributions that have not been distributed) with respect to the employee's designated Roth account. In addition, gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to the designated Roth account and other accounts under the plan. The proposed regulations provided that forfeitures may not be allocated to the designated Roth account. The final regulations retain this rule and, in response to comments, clarify that no contributions other than designated Roth contributions and rollover contributions described in

section 402A(c)(3)(B) are permitted to be allocated to a designated Roth account. For example, matching contributions are not permitted to be allocated to a designated Roth account. The final regulations also retain the rule that the separate accounting requirement applies at the time the designated Roth contribution is contributed to the plan and must continue to apply until the designated Roth account is completely distributed.

Other Rules

These final regulations retain the requirement that a designated Roth contribution must satisfy the requirements applicable to any other elective contributions made under a qualified cash or deferred arrangement. Thus, designated Roth contributions are subject to the nonforfeitability and distribution restrictions applicable to elective contributions and are taken into account under the actual deferral percentage test (ADP test) of section 401(k)(3) in the same manner as pre-tax elective contributions. Similarly, designated Roth contributions may be treated as catch-up contributions and serve as the basis for a participant loan.

A number of commentators discussed the application of section 401(a)(9) to plans to which designated Roth contributions are made. These commentators pointed out that under section 408A, Roth IRAs are not subject to the rules of section 401(a)(9)(A) (*i.e.*, Roth IRAs are not subject to the rules of section 401(a)(9) while the Roth IRA owner is alive). Although Roth IRAs are not subject to section 401(a)(9) while the IRA owner is alive, section 402A does not provide comparable rules regarding the application of section 401(a)(9) to designated Roth accounts under a cash or deferred arrangement. Thus, such designated Roth accounts are subject to the rules of section 401(a)(9)(A) and (B) in the same manner as pre-tax elective contributions.

In response to comments asking for clarification, the final regulations provide rules regarding elections to make designated Roth contributions. These rules specifically provide that the rules in § 1.401(k)–1(e)(2)(ii) regarding frequency of elections to make pre-tax elective contributions also apply to elections to make designated Roth contributions. The rules also specifically address automatic enrollment and permit a plan to utilize automatic enrollment in conjunction with designated Roth contributions. Under the final regulations, a plan that provides for a cash or deferred election under which contributions are made in the absence of an affirmative election and that has both pre-tax elective contributions and designated Roth contributions must set forth the extent to which those default contributions are pre-tax elective contributions or designated Roth contributions. If the default contributions are designated Roth contributions, then an employee who has not made an affirmative election is deemed to have irrevocably designated the contributions (in accordance with section 402A(c)(1)(B)) as designated Roth contributions.

A number of commentators addressed direct rollovers of amounts from a designated Roth account. In response to these comments, the regulations clarify that a direct rollover from a designated Roth account under a qualified cash or deferred arrangement may only be made to another designated Roth account under an applicable retirement plan described in section 402A(e)(1) or to a Roth IRA described in section 408A, and only to the extent the direct rollover is permitted under the rules of section 402(c). In addition, a plan is permitted to treat the balance of the participant's designated Roth account and the participant's other accounts under the plan as accounts held under two separate plans (within the meaning of section 414(l)) for purposes of applying the special rule in A–11 of § 1.401(a)(31)–1 (under which a plan will satisfy section 401(a)(31) even though the plan administrator does not permit any distributee to elect a direct rollover with respect to eligible rollover distributions during a year that are reasonably expected to total less than $200). Thus, if a participant's balance in the designated Roth account is less than $200, then the plan is not required to offer a direct rollover election with respect to that account or to apply the automatic rollover provisions of section 401(a)(31)(B) with respect to that account.

Section 1.401(k)–2 contains correction methods that may be used when a plan fails to satisfy the ADP test for a year. These final regulations retain the rule in the proposed regulations relating to these correction methods that permits a highly compensated employee (HCE), as defined in section 414(q), with elective contributions for a year that include both pre-tax elective contributions and designated Roth contributions to elect whether excess contributions are to be attributed to pre-tax elective contributions or designated Roth contributions. There is no requirement that the plan provide this option, and a plan may provide for one of the correction methods described in the final regulations without permitting an HCE to make such an election.

These final regulations also retain the rule that a distribution of excess contributions is not includible in gross income to the extent it represents a distribution of designated Roth contributions. However, the income allocable to a corrective distribution of excess contributions that are designated Roth contributions is includible in gross income in the same manner as income allocable to a corrective distribution of excess contributions that are pre-tax elective contributions. The regulations also provide a similar rule under the correction methods that may be used when a plan fails to satisfy the actual contribution percentage (ACP) test in § 1.401(m)–2.

Additional Plan Terms

In addition to the rules relating to section 401(k) and (m) discussed above, there are other aspects of designated Roth contributions that would be reflected in plan terms and are not addressed in these regulations. For example, while a plan is permitted to allow an employee to elect the character of a distribution (*i.e.*, whether the distribution will be made from the designated Roth account or other accounts), the extent to which a plan so permits must be set forth in the terms of the plan.

Certain Issues Addressed in Proposed Regulations

These final regulations do not provide guidance with respect to the taxation of distributions of designated Roth contributions. For example, the regulations do not provide guidance with respect to the recovery of an employee's investment in the contract associated with his or her designated Roth contributions. Proposed regulations under section 402A, to be issued in the near future, address these taxation issues.

Effective Date

Section 402A is effective for an employee's taxable years beginning after December 31, 2005. These regulations have the same effective date as the regulations under section 401(k) that they are amending. Thus, these final regulations are generally applicable to plan years beginning on or after January 1, 2006. If a plan is applying the section 401(k) regulations as of an earlier effective date (as provided under those regulations), to the extent that section 402A is effective, that same early effective date applies to these regulations. For a plan that has an effective date for the section 401(k) regulations that is after the effective date of section 402A (either an employer that

does not have a calendar year plan or a plan established pursuant to a collective bargaining agreement that has a delayed effective date for the section 401(k) regulations), the employer may rely on these regulations prior to the effective date of the final section 401(k) regulations for the plan, even if the plan does not otherwise implement the section 401(k) regulations earlier than required.

These regulations do not provide rules for the application of the EGTRRA sunset provision (section 901 of EGTRRA), under which the provisions of EGTRRA do not apply to taxable, plan, or limitation years beginning after December 31, 2010. Unless the EGTRRA sunset provision is repealed before it becomes effective, additional guidance will be needed to clarify its application.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 553(b) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that most small entities that maintain a section 401(k) plan use a third party provider to administer the plan. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are R. Lisa Mojiri-Azad and Cathy A. Vohs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in the development of these regulations.

List of Subjects

26 CFR Part 1 (1.401–0—1.420–1)

Bonds; Employee benefit plans; Income taxes; Pensions; Reporting and recordkeeping requirements; Securities; Trusts and trustees.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.401(k)–0 is amended as follows:

1. The entry for § 1.40(k)–1(f) is revised and entries for § 1.401(k)–1(f)(1), (2), (3), (4) and (5) are added.

2. An entry for § 1.401(k)–2(b)(2)(vi)(C) is added.

The additions read as follows:

§ 1.401(k)–0 Table of contents.

* * * * *

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(f) Special rules for designated Roth contributions.

(1) In general.

(2) Separate accounting required.

(3) Designated Roth contributions must satisfy rules applicable to elective contributions.

(i) In general.

(ii) Special rules for direct rollovers.

(4) Rules regarding designated Roth contribution elections.

(i) Frequency of elections.

(ii) Default elections.

(5) Effective date.

(i) In general.

(ii) Sunset provisions.

* * * * *

§ 1.401(k)–2 ADP test.

* * * * *

(b) * * *

(2) * * *

(vi) * * *

(C) Corrective distributions attributable to designated Roth contributions.

* * * * *

■ **Par. 3.** Section 1.401(k)–1(f) is revised as follows:

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(f) *Special rules for designated Roth contributions*—(1) *In general.* The term designated Roth contribution means an elective contribution under a qualified cash or deferred arrangement that, to the extent permitted under the plan, is—

(i) Designated irrevocably by the employee at the time of the cash or deferred election as a designated Roth contribution that is being made in lieu of all or a portion of the pre-tax elective contributions the employee is otherwise eligible to make under the plan;

(ii) Treated by the employer as includible in the employee's gross income at the time the employee would have received the amount in cash if the employee had not made the cash or deferred election (*e.g.*, by treating the contributions as wages subject to applicable withholding requirements); and

(iii) Maintained by the plan in a separate account (in accordance with paragraph (f)(2) of this section).

(2) *Separate accounting required.* Under the separate accounting requirement of this paragraph (f)(2), contributions and withdrawals of designated Roth contributions must be credited and debited to a designated Roth account maintained for the employee and the plan must maintain a record of the employee's investment in the contract (*i.e.*, designated Roth contributions that have not been distributed) with respect to the employee's designated Roth account. In addition, gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to the designated Roth account and other accounts under the plan. However, forfeitures may not be allocated to the designated Roth account and no contributions other than designated Roth contributions and rollover contributions described in section 402A(c)(3)(B) may be allocated to such account. The separate accounting requirement applies at the time the designated Roth contribution is contributed to the plan and must continue to apply until the designated Roth account is completely distributed.

(3) *Designated Roth contributions must satisfy rules applicable to elective contributions*—(i) *In general.* A designated Roth contribution must satisfy the requirements applicable to elective contributions made under a qualified cash or deferred arrangement. Thus, for example, a designated Roth contribution must satisfy the requirements of paragraphs (c) and (d) of this section and is treated as an employer contribution for purposes of sections 401(a), 401(k), 402, 404, 409, 411, 412, 415, 416 and 417. In addition, the designated Roth contributions are treated as elective contributions for purposes of the ADP test. Similarly, the designated Roth account under the plan is subject to the rules of section 401(a)(9)(A) and (B) in the same manner as an account that contains pre-tax elective contributions.

(ii) *Special rules for direct rollovers.* A direct rollover from a designated Roth account under a qualified cash or deferred arrangement may only be made to another designated Roth account under an applicable retirement plan described in section 402A(e)(1) or to a Roth IRA described in section 408A, and only to the extent the rollover is permitted under the rules of section 402(c). Moreover, a plan is permitted to treat the balance of the participant's designated Roth account and the participant's other accounts under the plan as accounts held under two separate plans (within the meaning of section 414(l)) for purposes of applying the special rule in A–11 of § 1.401(a)(31)–1 (under which a plan will satisfy section 401(a)(31) even though the plan administrator does not permit any distributee to elect a direct rollover with respect to eligible rollover distributions during a year that are reasonably expected to total less than $200).

(4) *Rules regarding designated Roth contribution elections*—(i) *Frequency of elections.* The rules under paragraph (e)(2)(ii) of this section regarding frequency of elections apply in the same manner to both pre-tax elective contributions and designated Roth contributions. Thus, an employee must have an effective opportunity to make (or change) an election to make designated Roth contributions at least once during each plan year.

(ii) *Default elections*—(A) In the case of a plan that provides for both pre-tax elective contributions and designated Roth contributions and in which, under paragraph (a)(3)(ii) of this section, the default in the absence of an affirmative election is to make a contribution under the cash or deferred arrangement, the plan terms must provide the extent to which the default contributions are pre-tax elective contributions and the extent to which the default contributions are designated Roth contributions.

(B) If the default contributions under the plan are designated Roth contributions, then an employee who has not made an affirmative election is deemed to have irrevocably designated the contributions (in accordance with section 402A(c)(1)(B)) as designated Roth contributions.

(5) *Effective date*—(i) *In general.* Section 402A is effective for taxable years beginning after December 31, 2005.

(ii) *Sunset provisions.* The rules set forth in this paragraph (f) do not address the application of section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107–16; 115 Stat. 38) (under which the amendments made by that Act do not apply to taxable, plan, or limitation years beginning after December 31, 2010).

* * * * *

■ **Par. 4.** Section 1.401(k)–2 is amended as follows:

1. A new sentence is added after the second sentence in paragraph (b)(1)(ii).

2. The last sentence in paragraph (b)(2)(vi)(B) is amended by adding the phrase ", except to the extent provided in paragraph (b)(2)(vi)(C) of this section" at the end.

3. Paragraph (b)(2)(vi)(C) is added.

The additions read as follows:

§ 1.401(k)–2 ADP test.

* * * * *

(b) * * *

(1) * * *

(ii) * * * Similarly, a plan may permit an HCE with elective contributions for a year that includes both pre-tax elective contributions and designated Roth contributions to elect whether the excess contributions are to be attributed to pre-tax elective contributions or designated Roth contributions. * * *

* * * * *

(2) * * *

(vi) * * *

(C) *Corrective distributions attributable to designated Roth contributions.* Notwithstanding paragraphs (b)(2)(vi)(A) and (B) of this section, a distribution of excess contributions is not includible in gross income to the extent it represents a distribution of designated Roth contributions. However, the income allocable to a corrective distribution of excess contributions that are designated Roth contributions is included in gross income in accordance with paragraph (b)(2)(vi)(A) or (B) of this section (*i.e.,* in the same manner as income allocable to a corrective distribution of excess contributions that are pre-tax elective contributions).

* * * * *

■ **Par. 5.** Section 1.401(k)–6 is amended as follows:

1. The definitions of "Designated Roth account" and "Designated Roth contributions" are added after the definition of *Current year testing method.*

2. A new definition of "Pre-tax elective contributions" is added after the definition of *Pre-ERISA money purchase pension plan.*

The additions read as follows:

§ 1.401(k)–6 Definitions.

* * * * *

Designated Roth account. Designated Roth account means a separate account maintained by a plan to which only designated Roth contributions (including income, expenses, gains and losses attributable thereto) are made.

Designated Roth contributions. Designated Roth contributions means designated Roth contributions as defined in § 1.401(k)–1(f)(1).

* * * * *

Pre-tax elective contributions. Pre-tax elective contributions means elective contributions under a qualified cash or deferred arrangement that are not designated Roth contributions.

* * * * *

■ **Par. 6.** Section 1.401(m)–0 is amended by adding an entry for § 1.401(m)–2(b)(2)(vi)(C) to read as follows:

§ 1.401(m)–0 Table of contents.

* * * * *

§ 1.401(m)–2 ACP test.

* * * * *

(b) * * *

(2) * * *

(vi) * * *

(C) Corrective distributions attributable to designated Roth contributions.

* * * * *

■ **Par. 7.** Section 1.401(m)–2 is amended as follows:

1. The last sentence in paragraph (b)(2)(vi)(B) is amended by adding the phrase ", or as provided in paragraph (b)(2)(vi)(C) of this section" at the end.

2. Paragraph (b)(2)(vi)(C) is added.

The additions read as follows:

§ 1.401(m)–2 ACP test.

* * * * *

(b) * * *

(2) * * *

(vi) * * *

(C) *Corrective distributions attributable to designated Roth contributions.* Notwithstanding paragraphs (b)(2)(vi)(A) and (B) of this section, a distribution of excess aggregate contributions is not includible in gross income to the extent it represents a distribution of designated Roth contributions. However, the income allocable to a corrective distribution of excess aggregate contributions that are designated Roth contributions is taxed in accordance with paragraph (b)(2)(vi)(A) or (B) of this section (*i.e.,* in the same manner as income allocable to a corrective distribution of excess aggregate contributions that are not designated Roth contributions).

* * * * *

■ **Par. 8.** Section 1.401(m)–5 is amended by adding a definition of "Designated Roth contributions" after the definition

of *Current year testing method* to read as follows:

§ 1.401(m)–5 Definitions.

* * * * *

Designated Roth contributions. Designated Roth contributions means designated Roth contributions as defined in § 1.401(k)–1(f)(1).

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 9.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 10.** In § 602.101, paragraph (b) is amended by adding an entry for "1.401(k)–1" in numerical order to the table to read, in part, as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.401(k)–1	1545–1930
* * * * *	

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 13, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary for Tax Policy.

[FR Doc. 05–24495 Filed 12–30–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[TD 9239]

RIN 1545–BE00

Time for Filing Employment Tax Returns and Modifications to the Deposit Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations establishing the Employers' Annual Federal Tax Program (Form 944) (hereinafter referred to as the Form 944 Program). The temporary regulations relate to sections 6011 and 6302 of the Internal Revenue Code (Code) concerning reporting and paying income taxes withheld from wages and reporting and paying taxes under the Federal Insurance Contributions Act (FICA) (collectively, employment taxes). These temporary regulations provide requirements for filing returns under FICA and returns of income tax withheld under section 6011 and §§ 31.6011(a)–1 and 31.6011(a)–4 of the Employment Tax Regulations.

These temporary regulations generally require employers who receive written notification from the Commissioner of their qualification for the Form 944 Program to file a Form 944, "Employer's Annual Federal Tax Return," rather than Form 941, "Employer's Quarterly Federal Tax Return." In addition, these temporary regulations provide requirements for employers to make deposits of employment taxes under section 6302 and § 31.6302–1. These temporary regulations permit employers in the Form 944 Program to deposit or remit their accumulated employment taxes annually with their Form 944 if they satisfy the provisions of the de minimis deposit rule, as modified. Also, these temporary regulations modify the lookback period used to determine an employer's status as a monthly or semi-weekly depositor.

The portions of this document that are final regulations provide necessary cross-references to the temporary regulations as well as technical revisions. The technical revisions correct the table of contents in § 31.6302–0 and a cross-reference in § 31.6302–1(e)(2) and remove all references to an IRS district director, as that position no longer exists within the IRS. In addition, a cross-reference to the temporary regulations under section 6011 was added to the final regulations under section 6071, regarding the time for filing returns. The text of the temporary regulations also serves, in part, as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**. In addition to the provisions contained in these temporary regulations related to the Form 944 Program, the proposed regulations provide a modification to the *de minimis* deposit rule applicable to quarterly return filers.

DATES: *Effective Date:* These regulations are effective as of January 1, 2006.

Applicability Date: These regulations apply with respect to taxable years beginning on or after January 1, 2006. The applicability of §§ 31.6011–1T, 31.6011–4T, and 31.6302–1T will expire on or before December 30, 2008.

FOR FURTHER INFORMATION CONTACT: Raymond Bailey, (202) 622–4910 (filing requirements under section 6011), or Audra Dineen, (202) 622–4940 (deposit requirements under section 6302) (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

These temporary regulations amend the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) under section 6011 relating to the Federal employment tax return filing requirements and section 6302 relating to the employment tax deposit requirements.

Section 31.6011(a)–1 of the Employment Tax Regulations provides rules requiring employers to file returns quarterly to report FICA taxes. Section 31.6011(a)–4 of the Employment Tax Regulations requires that every person required to make a return of income tax withheld from wages pursuant to section 3402 shall make a return quarterly. Under these existing regulations, employers must file Form 941, "Employer's Quarterly Federal Tax Return," each quarter reporting FICA taxes and income tax withheld. Certain employers, however, file returns reporting FICA and income tax withheld annually, such as agricultural employers who file Form 943, "Employer's Annual Federal Tax Return for Agricultural Employees." Section 31.6011(a)–4(a)(3). Existing regulations also provide certain exceptions to the quarterly filing requirement for wages paid for domestic service.

Section 31.6302–1 of the Employment Tax Regulations provides rules for employers to make deposits of employment taxes. Under these rules, deposits of employment taxes reported on Form 941 are generally made either monthly or semi-weekly. In order for an employer to determine its status as a monthly or semi-weekly depositor, an employer determines the aggregate amount of employment taxes reported in the 12-month period ending the preceding June 30 (the lookback period). New employers are treated as having an employment tax liability of zero for any part of the lookback period before the date they started or acquired their business. All employers are subject to a "One-Day rule" requiring employment taxes to be deposited on the next banking day if the employer has accumulated $100,000 or more of employment taxes. If an employer fails to make timely deposits of employment

taxes, then, absent reasonable cause, the employer will be subject to a penalty for failure to deposit under section 6656.

Section 31.6302–1(f)(4) (the *de minimis* deposit rule) provides that for quarterly and annual return periods, if the total amount of employment taxes for the return period is less than $2,500 and that amount is deposited or remitted with a timely filed return for that return period, the amount will be deemed to have been timely deposited. Under existing regulations, employers who file annual employment tax returns (such as Form 943 for agricultural workers) are required to deposit employment taxes at least monthly if their annual employment tax liability equals or exceeds the *de minimis* deposit rule amount of $2,500.

The purpose of these temporary regulations is to generally require employers who receive written notification of their qualification for the Form 944 Program to file an annual employment tax return, Form 944, rather than the quarterly Form 941 return. For these employers, Form 944 will replace Form 941. Form 944 will not replace Form 943 for agricultural employers or Schedule H, Form 1040, for employers with only household employees. Notwithstanding notification from the IRS of qualification for the Form 944 Program, employers who prefer to file Form 941 may be eligible to do so if they timely contact the IRS and satisfy one of the following two conditions: (1) The employer notifies the IRS of its preference to electronically file Forms 941 quarterly in lieu of filing Form 944 annually, or (2) the employer notifies the IRS that it anticipates its annual employment tax liability will exceed $1,000. Employers otherwise meeting the criteria of the Form 944 Program will be permitted to file Form 941 only if they receive written notification from the IRS that their filing requirement has been changed to Form 941.

Under these temporary regulations, most employers who file Form 944 will be able to remit employment taxes annually with their returns rather than making monthly or semi-weekly deposits. Form 944 will generally be due January 31 of the year following the year for which the return is filed. If the employer timely deposits all accumulated employment taxes on or before January 31 of the year following the year for which the return is filed, then the employer will have 10 extra calendar days to file Form 944 pursuant to § 31.6071(a)–1(a).

The Form 944 Program is limited to employers meeting certain eligibility requirements described in the temporary regulations. Currently, the Form 944 Program will be limited to employers whose estimated annual employment tax liability is $1,000 or less. The IRS will send written notifications of qualification for the Form 944 Program to the employers that the IRS has estimated will have an annual employment tax liability of $1,000 or less (based on the employers' prior Form 941 reporting history). As this estimate may not reflect recent or imminent changes in an employer's payroll, employers receiving notices may contact the IRS to discuss their qualification if they anticipate that their annual employment tax liability will exceed $1,000. In addition, employers who do not receive a notice may contact the IRS to request to be in the Form 944 Program if they anticipate that their annual employment tax liability will be $1,000 or less. New employers will receive notification of qualification for the Form 944 Program if they notify the IRS that they anticipate their annual employment tax liability will be $1,000 or less. For example, new employers can indicate their estimated employment tax liability on their Form SS–4, Application for Employer Identification Number. The IRS and Treasury Department are considering expanding the Form 944 Program in the future and seek comments on the eligibility requirements and how best to change them.

If an employer is required to file Form 944 to report its employment tax liability for the current calendar year, the employer must file Form 944 even if the employer's actual employment tax liability for the current year exceeds the eligibility requirement threshold ($1,000 under these regulations). If the Form 944 shows that the employer's employment tax liability exceeds the eligibility threshold, then the employer will be required to file Form 941 to report its employment tax liability in the future. The IRS will send written notification to the employer that the employer's filing requirement has changed.

For employers in the Form 944 Program during the current or previous calendar year, the temporary regulations also modify the lookback period for determining whether an employer is a monthly or semi-weekly depositor. This change is necessary because once an employer begins to file annual Form 944 returns, it may not be possible to determine the employer's aggregate amount of employment tax liability during the lookback period set forth in the existing regulations (12-month period ending the preceding June 30). In the event that an employer exceeds the *de minimis* deposit amount that employer will need to determine whether it is a monthly or semi-weekly depositor. Consequently, these temporary regulations change the lookback period for employers in the Form 944 Program during the current, or preceding, calendar year. With respect to those employers, the lookback period is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 2007 is calendar year 2005.

These temporary regulations also modify the *de minimis* deposit rules in certain situations to accommodate employers in the Form 944 Program during the current, or preceding, calendar year. These modifications are designed to assist employers who qualified for the Form 944 Program because their annual employment tax liability satisfied the eligibility requirements ($1,000 or less), but ultimately had a total employment tax liability for the year exceeding the *de minimis* deposit amount ($2,500 under existing regulations). The deposit rules in § 31.6302–1, including the *de minimis* deposit rule in § 31.6302–1(f)(4), apply to employers who file Form 944. Therefore, these employers will not have to make deposits and can pay their employment tax liability when they timely file their Forms 944 on or before January 31 only if their total employment tax liability for the year is less than $2,500. Under the existing *de minimis* deposit rule, if an employer's employment tax liability equals or exceeds $2,500 for the year, the employer would be required to deposit employment taxes and, absent reasonable cause, would be subject to the penalty for failure to deposit if the employer did not make timely deposits. Any employer that accumulates $100,000 or more of employment taxes is subject the One-Day rule of § 31.6302–1(c)(3), and is required to deposit those taxes on the next banking day.

To assist employers whose tax liability exceeds the *de minimis* amount while in the Form 944 Program, these regulations modify the deposit rules in two ways. First, as employers who file Form 941 quarterly would be allowed a quarterly $2,500 *de minimis* amount when they timely filed their quarterly returns instead of an annual *de minimis* amount, these regulations modify the *de minimis* deposit rule to mirror the treatment employers would have if they continued to file Form 941 quarterly instead of Form 944 annually. Thus, these regulations allow employers in the Form 944 Program to apply a quarterly *de minimis* deposit rule if they deposit

the employment taxes that accumulated during a quarter by the last day of the month following the close of the quarter (the day their quarterly Forms 941 would have been due). If an employer's employment tax liability for a quarter will not be *de minimis*, then the employer should make deposits either monthly or semi-weekly, depending on their deposit schedule, to avoid being subject to the failure-to-deposit penalty.

Second, because employers may not realize their prior year's employment tax liability exceeded the eligibility requirement (currently, $1,000 or less) until they file Form 944 on January 31 of the year following the year for which the return is filed, these employers might not realize that they will be required to file Form 941 in the current year until after the date on which to timely make their January deposit obligation(s) for the current year. Therefore, these regulations allow employers who were in the Form 944 Program in the prior year to avoid a failure-to-deposit penalty during the first month they fail to deposit any required deposit(s), if they fully pay their January employment taxes by March 15 of the current year. For example, an employer who was in the Form 944 Program during 2006 and had an employment tax liability for 2006 of $4,000 would not qualify for the Form 944 Program for 2007. Under these regulations, if the employer was a monthly depositor for 2007, it would be required to deposit the employment taxes it accumulated in January 2007 by February 15, 2007. If the employer does not deposit these accumulated taxes by February 15, 2007, then it will be deemed to have timely deposited if it deposits them by March 15, 2007.

Lastly, these regulations contain final regulations that provide cross-references to the temporary regulations, correct and amend the table of contents in § 31.6302–0, correct a cross-reference in § 31.6302–1(e)(2), and revise the regulations under section 6302 to remove all references to an IRS district director, a position that no longer exists in the IRS.

These temporary regulations are part of the IRS's effort to reduce taxpayer burden by requiring certain employers to file employment tax returns annually rather than quarterly and allowing them, in most circumstances, to remit employment taxes annually with their return. By reducing the number of returns employers are required to file per year, the IRS will reduce each eligible employer's burden.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act, please refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these final and temporary regulations are Raymond Bailey, Audra M. Dineen, and Emly B. Berndt of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 31 are to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph. 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *.

§§ 1.6302–1 and 1.6302–2 [Amended]

■ **Par. 2.** Sections 1.6302–1 and 1.6302–2 are amended as follows:

Section	Remove	Add
1.6302–1(c) third sentence	to the district director (or director of a service center).	
1.6302–1(c) fourth sentence	the district director or director of a service center with.	
1.6302–2(b)(6) last sentence	to the district director or director of a service center.	

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Par. 3.** The authority citation for part 31 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *.

§§ 31.6302–1, 31.6302(c)–1, 31.6302(c)–2 and 31.6302(c)–3 [Amended]

■ **Par. 4.** In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Section	Remove	Add
31.6302–1(e)(2) first sentence	§ 31.6011(a)(4) or (5)	§ 31.6011(a)–4 or 31.6011(a)–5.
31.6302–1(k)(1) first sentence	District Director notice	Notice.
31.6302–1(k)(1) first sentence	from the district director.	
31.6302–1(k)(1) first sentence, second parenthetical	district director	Commissioner.
31.6302(c)–1(a)(3) last sentence	to the district director or director of a service center.	
31.6302(c)–1(b)(1) first sentence	from the district director.	
31.6302(c)–1(b)(1) first sentence, third parenthetical	by the district director.	
31.6302(c)–2(c) last sentence	to the district director or director of a service center.	
31.6302(c)–3(b)(4) last sentence	to the district director or director of a service center.	

■ **Par. 5.** Section 31.6011(a)–1 is amended by adding paragraph (a)(5) to read as follows:

§ 31.6011(a)–1 Returns under Federal Insurance Contributions Act.

(a) * * *

(5) [Reserved]. For further guidance, see § 31.6011(a)–1T(a)(5).

* * * * *

■ **Par. 6.** Section 31.6011(a)–1T is added to read as follows:

§ 31.6011(a)–1T Returns under Federal Insurance Contributions Act (temporary).

(a)(1) through (a)(4) [Reserved]. For further guidance, see § 31.6011(a)–1(a)(1) through (a)(4).

(5) *Employers in the Employers' Annual Federal Tax Program (Form 944)*—(i) *In general.* For taxable years beginning on or after January 1, 2006, employers notified of their qualification for the Employers' Annual Federal Tax Program (Form 944) are required to file Form 944, "Employer's Annual Federal Tax Return." The Internal Revenue Service (IRS) will notify employers in writing of their qualification for the Employers' Annual Federal Tax Program (Form 944). For provisions relating to the time and place for filing returns, see §§ 31.6071(a)–1 and 31.6091–1, respectively.

(ii) *Qualification for the Employers' Annual Federal Tax Program (Form 944).* The IRS will send notifications of qualification for the Employers' Annual Federal Tax Program (Form 944) to employers with an estimated annual employment tax liability of $1,000 or less. New employers who timely notify the IRS that they anticipate their estimated annual employment tax liability to be $1,000 or less will be notified of their qualification for the Employers' Annual Federal Tax Program (Form 944). If an employer in the Employers' Annual Federal Tax Program (Form 944) reports an annual employment tax liability of more than $1,000, the IRS will notify the employer that the employer's filing status has changed and the employer will be required to file the quarterly Form 941 for succeeding tax years.

(iii) *Exception to qualification for the Employers' Annual Federal Tax Program (Form 944).* Notwithstanding notification by the IRS of qualification for the Employers' Annual Federal Tax Program (Form 944), an employer may file Form 941 if—

(A) One of the following conditions applies—

(*1*) The employer anticipates that its annual employment tax liability will exceed $1,000, or

(*2*) The employer prefers to electronically file Forms 941 quarterly in lieu of filing Form 944 annually;

(B) The employer contacts the IRS, pursuant to the instructions in the IRS' written notification, to request to file Form 941; and

(C) The IRS sends the employer a written notification that the employer's filing requirement has been changed to Form 941.

(b) through (f) [Reserved]. For further guidance, see § 31.6011(a)–1(b) through (f).

■ **Par. 7.** Section 31.6011(a)–4 is amended by adding paragraph (a)(4) to read as follows:

§ 31.6011(a)–4 Returns of income tax withheld.

(a) * * *

(4) [Reserved]. For further guidance, see § 31.6011(a)–4T(a)(4).

* * * * *

■ **Par. 8.** Section 31.6011(a)–4T is added to read as follows:

§ 31.6011(a)–4T Returns of income tax withheld (temporary).

(a)(1) through (a)(3) [Reserved]. For further guidance, see § 31.6011(a)–4(a)(1) through (a)(3).

(4) *Employers in the Employers' Annual Federal Tax Program (Form 944)*—(i) *In general.* For taxable years beginning on or after January 1, 2006, employers notified of their qualification for the Employers' Annual Federal Tax Program (Form 944) are required to file a Form 944, "Employer's Annual Federal Tax Return." The Internal Revenue Service (IRS) will notify employers in writing of their qualification for the Employers' Annual Federal Tax Program (Form 944). For provisions relating to the time and place for filing returns, see §§ 31.6071(a)–1 and 31.6091–1, respectively.

(ii) *Qualification for the Employers' Annual Federal Tax Program (Form 944).* The IRS will send notifications of qualification for the Employers' Annual Federal Tax Program (Form 944) to employers with an estimated annual employment tax liability of $1,000 or less. New employers who timely notify the IRS that they anticipate their estimated annual employment tax liability to be $1,000 or less will be notified of their qualification for the Employers' Annual Federal Tax Program (Form 944). If an employer in the Employers' Annual Federal Tax Program (Form 944) reports an annual employment tax liability of more than $1,000, the IRS will notify the employer that the employer's filing status has changed and that the employer will be required to file the quarterly Form 941 for succeeding tax years.

(iii) *Exception to qualification for the Employers' Annual Federal Tax Program (Form 944).* Notwithstanding notification by the IRS of qualification for the Employers' Annual Federal Tax Program (Form 944), an employer may file Form 941 if—

(A) One of the following conditions applies—

(*1*) The employer anticipates that its annual employment tax liability will exceed $1,000, or

(*2*) The employer prefers to electronically file Forms 941 quarterly in lieu of filing Form 944 annually;

(B) The employer contacts the IRS, pursuant to the instructions in the IRS' written notification, to request to file Form 941; and

(C) The IRS sends the employer a written notification that the employer's filing requirement has been changed to Form 941.

(b) through (c) [Reserved]. For further guidance, see § 31.6011(a)–4(b) through (c).

■ **Par. 9.** In § 31.6071(a)–1, the first sentence in paragraph (a)(1) is revised to read as follows:

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) * * *

(1) *Quarterly or annual returns.* Except as provided in subparagraph (4) of this paragraph, each return required to be made under §§ 31.6011(a)–1 and 31.6011(a)–1T, in respect of the taxes imposed by the Federal Insurance Contributions Act (26 U.S.C. 3101–3128), or required to be made under §§ 31.6011(a)–4 and 31.6011(a)–4T, in respect of income tax withheld, shall be filed on or before the last day of the first calendar month following the period for which it is made. * * *

* * * * *

■ **Par. 10.** Section 31.6302–0 is amended by:

■ 1. Adding new entries for § 31.6302–1(b)(4), (c)(5) and (6), (d), (f)(4), and (f)(5).

■ 2. Removing the entries for § 31.6302–1(b)(5) and (i).

■ 3. Redesignating the entries for § 31.6302–1(h), (j), (k), and (m) as (i), (k), (m), and (n), respectively.

■ 4. Adding new entries for § 31.6302–1(h) and (j).

■ 5. Revising the entry for newly designated § 31.6302–1(k)(1).

■ 6. Adding entries for § 31.6302–1T.

The revision and additions read as follows:

§ 31.6302–0 Table of contents.

* * * * *

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(b) * * *

(4) Lookback period.

(i) [Reserved].

(ii) [Reserved].

(c) * * *

(5) [Reserved].

(6) [Reserved].

(d) * * *

Example 6 [Reserved].

* * * * *

(f) * * *

(4) De minimis rule.

(i) De minimis deposit rule for quarterly and annual return periods beginning on or after January 1, 2001.

(ii) [Reserved].

(iii) [Reserved].

(5) * * *

Example 3. [Reserved].

* * * * *

(h) Time and manner of deposit—deposits required to be made by electronic funds transfer.

(1) In general.

(2) Applicability of requirement.

(i) Deposits for return periods beginning before January 1, 2000.

(ii) Deposits for return periods beginning after December 31, 1999.

(iii) Voluntary deposits.

(3) Taxes required to be deposited by electronic funds transfer.

(4) Definitions.

(i) Electronic funds transfer.

(ii) Taxpayer.

(5) Exemptions.

(6) Separation of deposits.

(7) Payment of balance due.

(8) Time deemed deposited.

(9) Time deemed paid.

* * * * *

(j) Voluntary payments by electronic funds transfer.

(k) * * *

(1) Notice exception.

* * * * *

§ 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

(a) through (b)(4)(ii) [Reserved].

(b)(4)(i) In general.

(ii) Adjustments.

(c)(1) through (c)(4) [Reserved].

(c)(5) Exception to the monthly and semi-weekly deposit rules for employers in the Employers' Annual Federal Tax Program (Form 944).

(c)(6) Extension of time to deposit rule for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.

(d) *Examples 1* through *5* [Reserved].

Example 6. Extension of time to deposit rule for employers in the Employer's Annual Federal Tax Program (Form 944) during the preceding year satisfied.

(e) through (f)(4)(ii) [Reserved].

(f)(4)(iii) De minimis deposit rule for employers currently in the Employers' Annual Federal Tax Program (Form 944).

(f)(5) *Examples 1* and *2* [Reserved].

Example 3. De minimis deposit rule for employers currently in the Employer's Annual Federal Tax Program (Form 944) satisfied.

(g) through (n) [Reserved].

■ **Par. 11.** Section 31.6302–1 is amended by:

■ 1. Revising paragraph (b)(4).

■ 2. Adding paragraphs (c)(5) and (6), (d) *Example 6,* and (f)(5) *Example 3.*

■ 3. Removing paragraph (b)(5).

■ 4. Revising paragraph (f)(4).

The revisions and additions read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(b) * * *

* * * * *

(4) *Lookback period*—(i) [Reserved]. For further guidance, see § 31.6302–1T(b)(4)(i).

(ii) [Reserved]. For further guidance, see § 31.6302–1T(b)(4)(ii).

(c) * * *

* * * * *

(5) [Reserved]. For further guidance, see § 31.6302–1T(c)(5).

(6) [Reserved]. For further guidance, see § 31.6302–1T(c)(6).

(d) * * *

* * * * *

Example 6. For further guidance, see § 31.6302–1T(d) *Example 6.*

* * * * *

(f) * * *

* * * * *

(4) *De minimis rule*—(i) *De minimis deposit rule for quarterly and annual return periods beginning on or after January 1, 2001.* If the total amount of accumulated employment taxes for the return period is less than $2,500 and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited.

(ii) [Reserved].

(iii) [Reserved]. For further guidance, see § 31.6302–1T(f)(4)(iii).

(5) * * *

* * * * *

Example 3. For further guidance, see § 31.6302–1T(f)(5) *Example 3.*

Par. 12. Section 31.6302–1T is added to read as follows:

§ 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

(a) through (b)(3) [Reserved]. For further guidance, see § 31.6302–1(a) through (b)(3).

(4) *Lookback period*—(i) *In general.* For employers who file Form 941, the lookback period for each calendar year is the twelve month period ended the preceding June 30. For example, the lookback period for calendar year 2006 is the period July 1, 2004 to June 30, 2005. The lookback period for employers who are in the Employers' Annual Federal Tax Program (Form 944), or were in it during the previous calendar year, is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 2006 is calendar year 2004. In determining status as either a monthly or semi-weekly depositor, an employer should determine the aggregate amount of employment tax liabilities reported on its return(s) (Form 941 or Form 944) for the lookback period. New employers shall be treated as having employment tax liabilities of zero for any part of the lookback period before the date the employer started or acquired its business.

(ii) *Adjustments.* The tax liability shown on an original return for the return period shall be the amount taken into account in determining whether more than $50,000 has been reported during the lookback period. In determining the aggregate employment taxes for each return period in a lookback period, an employer does not take into account any adjustments for the return period made on a supplemental return filed after the due date of the return. However, adjustments made on a Form 941c, Statement to Correct Information, attached to a Form 941 or Form 944 filed for a subsequent return period are taken into account in determining the employment tax liability for the subsequent return period.

(c)(1) through (c)(4) [Reserved]. For further guidance, see § 31.6302–1(c)(1) through (c)(4).

(5) *Exception to the monthly and semi-weekly deposit rules for employers in the Employers' Annual Federal Tax Program (Form 944).* Generally, an employer in the Employers' Annual Federal Tax Program (Form 944) may remit its accumulated employment taxes with its timely filed return and is not required to deposit under either the monthly or semi-weekly rules set forth in paragraphs (c)(1) and (2) of this section. An employer in the Employers'

Annual Federal Tax Program (Form 944) whose actual employment tax liability exceeds the eligibility threshold, as set forth in § 31.6011(a)–1T(a)(5)(ii) and § 31.6011(a)–4T(a)(4)(ii) will not qualify for this exception and should follow the deposit rules set forth in this section.

(6) *Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.* An employer who was in the Employers' Annual Federal Tax Program (Form 944) in the preceding year, but who is no longer qualified because its annual employment tax liability exceeded the eligibility threshold set forth in § 31.6011(a)–1T(a)(5)(ii) and § 31.6011(a)–4T(a)(4)(ii) in that preceding year, is required to deposit pursuant to § 31.6302–1. The employer will be deemed to have timely deposited its January deposit obligation(s) under § 31.6302–1(c)(1) through (4) for the first quarter of the year in which it must file quarterly using Form 941 if the employer deposits the amount of such deposit obligation(s) by March 15 of that year.

(d) *Examples 1* through *5* [Reserved]. For further guidance, see § 31.6302–1(d) *Examples 1* through *5.*

Example 6. Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year satisfied. F (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. F filed Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of $3,000. Because F's annual employment tax liability for the 2006 taxable year exceeded $1,000 (the eligibility requirement threshold), F may not file Form 944 for calendar year 2007. Based on F's liability during the lookback period (calendar year 2005, pursuant to § 31.6302–1T(b)(4)(i)), F is a monthly depositor for 2007. F accumulates $1,000 in employment taxes during January 2007. Because F is a monthly depositor, F's January deposit obligation is due February 15, 2007. F does not deposit these accumulated employment taxes on February 15, 2007. F accumulates $1,500 in employment taxes during February 2007. F's February deposit is due March 15, 2007. F deposits the $2,500 of employment taxes accumulated during January and February on March 15, 2007. Pursuant to § 31.6302–1T(c)(6), F will be deemed to have timely deposited the employment taxes due for January 2007, and, thus, the IRS will not impose a failure-to-deposit penalty under section 6656 for that month.

(e) through (f)(4)(ii) [Reserved]. For further guidance, see § 31.6302–1(e) through (f)(4)(ii).

(iii) *De minimis deposit rule for employers currently in the Employers' Annual Federal Tax Program (Form 944).* An employer in the Employers' Annual Federal Tax Program (Form 944) whose employment tax liability for the year equals or exceeds $2,500 but whose employment tax liability for a quarter of the year is *de minimis* pursuant to § 31.6302–1(f)(4)(i) will be deemed to have timely deposited the employment taxes due for that quarter if the employer fully deposits the employment taxes accumulated during the quarter by the last day of the month following the close of that quarter. Employment taxes accumulated during the fourth quarter can be either deposited by January 31 or remitted with a timely filed return for the return period.

(5) *Examples 1* and *2* [Reserved]. For further guidance, see § 31.6302–1(f)(5) *Examples 1* and *2.*

Example 3. De minimis deposit rule for employers currently in the Employers' Annual Federal Tax Program (Form 944) satisfied. K (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. In the first quarter of 2006, K accumulates employment taxes in the amount of $1,000. On April 28, 2006, K deposits the $1,000 of employment taxes accumulated in the 1st quarter. K accumulates another $1,000 of employment taxes during the second quarter of 2006. On July 31, 2006, K deposits the $1,000 of employment taxes accumulated in the 2nd quarter. K's business grows and accumulates $1,500 in employment taxes during the third quarter of 2006. On October 31, 2006, K deposits the $1,500 of employment taxes accumulated in the 3rd quarter. K accumulates another $2,000 in employment taxes during the fourth quarter. K files Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of $5,500 and submits a check for the remaining $2,000 of employment taxes with the return. K will be deemed to have timely deposited the employment taxes due for all of 2006, because K complied with the *de minimis* deposit rule provided in § 31.6302–1T(f)(4)(iii). Therefore, the IRS will not impose a failure-to-deposit penalty under section 6656 for any month of the year. Under this *de minimis* deposit rule, as K was required to file Form 944 for calendar year 2006, if K's employment tax liability for a quarter is *de minimis*, then K may deposit that quarter's liability by the last day of the month following the close of the quarter. This new *de minimis* rule allows K to have the benefit of the same quarterly *de minimis* amount K would have received if K filed Form 941 each quarter instead of Form 944 annually. Thus, as K's employment tax liability for each quarter was *de minimis*, K could deposit quarterly.

(g) through (n) [Reserved]. For further guidance, see § 31.6302–1(g) through (n).

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 8, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary for Tax Policy.

[FR Doc. 05–24565 Filed 12–30–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Justice Management Division

28 CFR Part 16

[AAG/A Order No. 019–2005]

Privacy Act of 1974; Implementation

AGENCY: Justice Management Division, Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (DOJ), Justice Management Division (JMD), is exempting from certain subsections of the Privacy Act, a new Privacy Act system of records entitled "Federal Bureau of Investigation Whistleblower Case Files, JMD–023." The system maintains all documents and evidence filed with the Director of the Office of Attorney Recruitment and Management (OARM), JMD, pertaining to requests for corrective action by employees of, or applicants for employment with, the Federal Bureau of Investigation (FBI) (or recommendations for corrective action by the Office of the Inspector General or Office of Professional Responsibility) brought under the FBI's whistleblower regulations.

Effective Date: This final rule is effective January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: The FBI's whistleblower regulations are at 28 CFR part 27; the specific role of the OARM is at 28 CFR part 27.4. This is the basis for the new system of records, "Federal Bureau of Investigation Whistleblower Case Files, JMD–023." The DOJ/JMD is exempting this system of records from 5 U.S.C. 552a (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k).

On September 7, 2005 (70 FR 53133) a proposed rule was published in the

Federal Register with an invitation to comment. No comments were received.

This rule relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information, Sunshine Act and Privacy.

■ Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

■ 1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

§ 16.76 Exemption of Justice Management Division.

■ 2. Section 16.76 is amended by adding paragraphs (c) and (d) to read as follows:

* * * * *

(c) The following system of records is exempted from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g): Federal Bureau of Investigation Whistleblower Case Files (Justice/JMD–023). These exemptions apply only to the extent that information in a record contained within this system is subject to exemptions pursuant to 5 U.S.C. 552a(j)(2) and (k).

(d) Exemption from the particular subsections is justified for the following reasons:

(1) *Subsection (c)(3).* To provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation, and thereby seriously impede law enforcement or counterintelligence efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties, civil remedies, or counterintelligence measures.

(2) *Subsection (c)(4).* This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d)(1).* Information within this record system could relate to official federal investigations and matters of law enforcement. Individual access to these records could compromise ongoing investigations, reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Disclosure may also reveal information relating to actual or potential law enforcement investigations. Disclosure of classified national security information would cause damage to the national security of the United States.

(4) *Subsection (d)(2).* Amendment of these records could interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) *Subsections (d)(3) and (4).* These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) *Subsection (e)(1).* It is often impossible to determine in advance if investigatory information contained in this system is accurate, relevant, timely and complete, but, in the interests of effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(7) *Subsection (e)(2).* To collect information from the subject individual could serve to notify the subject individual that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations.

(8) *Subsection (e)(3).* To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts.

(9) *Subsection (e)(5).* It is often impossible to determine in advance if investigatory information contained in this system is accurate, relevant, timely and complete, but, in the interests of effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(10) *Subsection (e)(8).* To serve notice could give persons sufficient warning to evade investigative efforts.

(11) *Subsection (g).* This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: December 21, 2005.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 05–24686 Filed 12–30–05; 8:45 am]

BILLING CODE 4410–PB–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[EPA–HQ–OW–2005–0038; FRL–8017–9]

Allotment Formula for Clean Water Act (CWA) Section 106 Funds; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This amendment to 40 CFR 35.162 will address a situation which occurred in EPA's FY 2006 CWA Section 106 appropriation process. The President's FY 2006 budget specifically requested an increase in Section 106 funding for enhanced monitoring activities, particularly for statistically-valid assessments of water quality nationwide and for strengthening State and interstate monitoring programs. This action announces EPA's amendment of its CWA allocation regulation to provide the Agency with the flexibility to allot separately these funds that have been appropriated by Congress for Section 106 grants and targeted for monitoring. The amendment applies only to those portions of Section 106 funds which have been targeted in EPA's appropriations process for specific water pollution control elements.

DATES: This final rule is effective on January 3, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OW–2005–0038. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is publicly available only in hard copy. Publicly available docket materials are available either electronically through www.regulations.gov 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 legal 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: Lena Ferris, Office of Water, Office of Wastewater Management, 4201M, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–8831; fax number: (202) 501–2399; email address: *ferris.lena@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

Regulated Entities: States and interstate agencies that are eligible to receive grants under Section 106 of the CWA.

II. Background

Section 106 of the CWA authorizes the EPA to provide grants to States and interstate agencies to administer programs for the prevention, reduction, and elimination of water pollution, including the development and implementation of ground-water protection strategies. Section 106(b) of the CWA directs the EPA Administrator to make allotments for grants from sums appropriated by Congress in each fiscal year "in accordance with regulations promulgated by him on the basis of the extent of the pollution problem in the respective States". EPA developed and promulgated 40 CFR 35.160–35.168 for allocating funds to the States and eligible interstate agencies.

The amendment to 40 CFR 35.162 will address a situation like that which occurred in EPA's FY 2006 Section 106 appropriation process. The President's FY 2006 budget specifically requested an increase in Section 106 funding for enhanced monitoring activities, particularly for statistically-valid assessments of water quality nationwide and strengthening State and interstate monitoring programs. The 2006 Conference Report, which accompanied EPA's 2006 appropriation act, indicated that a total of $18.5 million should be targeted to support enhanced monitoring efforts. EPA determined that if this amount were included in the general State and interstate allotment formulae, only a small number of States and interstates would actually receive an increase for this purpose while the majority of States would not receive a sufficient increase to strengthen their water quality monitoring activities through implementation of their monitoring strategies. As a result, EPA is amending 40 CFR 35.162 to provide the Agency with the authority to allot separately those CWA Section 106 funds which are targeted to specific water pollution control elements, as determined by EPA based on a review of the President's budget, Conference Reports, and/or appropriation acts. In developing this allotment formula, EPA will consult with the States and interstate agencies in determining the most appropriate mechanism to implement the alternative allocation formula, based on the extent of pollution. EPA intends to exercise its discretion and use this alternate allotment formula only in situations where the appropriations process has indicated that funds should be used for a specific purpose. The remaining Section 106 funds will continue to be allotted in accordance with applicable allotment formulae used by the Agency.

III. Additional Supplementary Information

This action announces EPA's amendment of 40 CFR 35.162 by adding section (d).

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not have Tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This 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. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before certain actions may take affect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act.

List of Subjects in 40 CFR Part 35

Environmental protection, Grant programs-environmental protection, Water pollution control.

Dated: December 23, 2005.

Benjamin H. Grumbles,

Assistant Administrator, Office of Water.

■ For the reasons stated in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 35—[AMENDED]

■ 1. The authority for citation for Part 35, Subpart A continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq;* 33 U.S.C. 1251 *et seq*; 42 U.S.C. 300f *et seq*; 42 U.S.C. 6901 *et seq*; 7 U.S.C. 136 *et seq*; 15 U.S.C. 2601 *et seq*; 42 U.S.C. 13101 *et seq*; Pub. L 104–134, 110 Stat. 1321, 1321–299 (1966); Pub.L. 105–65, 111 Stat. 1344, 1373 (1997).

Subpart A—[Amended]

■ 2. Section 35.162 is amended by adding paragraph (d) to read as follows:

§ 35.162 Basis for allotment.

* * * * *

(d) *Alternative allotment formula.* Notwithstanding paragraphs (b) and (c) of this section, if the Administrator determines that a portion of the funds appropriated under the Water Pollution Control grant program should be allotted for specific water pollution control elements, the Administrator may allot those funds to States and interstate agencies in accordance with a formula determined by him after consultation with the respective States and interstate agencies. The Administrator will make this determination under this paragraph only if EPA's appropriation process indicates that these funds should be used for this purpose.

[FR Doc. 05–24688 Filed 12–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2005–MT–0002, FRL–8012–8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Emergency Episode Avoidance Plan; Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Montana on August 2, 2004. The revisions are to the State's Emergency Episode Avoidance Plan (EEAP). The intended effect of this action is to make federally enforceable those provisions that EPA is approving. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on March 6, 2006, without further notice, unless EPA receives adverse comment by February 2, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2005–MT–0002 by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and *ostrand.laurie@epa.gov.*
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR–2005-MT–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, 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 *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *www.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 the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202–2466, (303) 312–6437, *ostrand.laurie@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. General Information
II. Background
III. EPA's Review of the State of Montana's August 2, 2004 submittal
IV. Final Action
V. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we,* or *our* mean or refer to the United States Environmental Protection Agency.

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

(iv) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or el-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion to the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part of section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Background

On August 2, 2004, the Governor submitted a SIP revision that contains amendments to the Montana Emergency Episode Avoidance Plan (EEAP). The EEAP fulfills the requirements of 40 CFR part 51, subpart H which requires a plan to prevent ambient concentrations of air pollutants from reaching levels that may endanger public health and welfare.

III. EPA's Review of the State of Montana's August 25, 2004 Submittal

The August 2, 2004 revisions to Montana's EEAP are substantive and administrative in nature. The substantive changes are in the priority classification of Air Quality Control Regions (AQCRs). Priority classifications are based on recent ambient concentrations. In the August 2004 EEAP submittal, Montana used the three most recent years of ambient data (2000, 2001 and 2002) to revise the priority classification of all AQCRs to priority III for all pollutants (sulfur dioxide (SO_2), carbon monoxide (CO), particulate matter (PM–10) nitrogen dioxide (NO_2), and ozone (O_3)). Previously the Helena and Missoula AQCR were classified as priority II for particulate matter (PM–10) and the remainder of the state was classified as Priority III for SO_2, CO, PM–10, NO_2 and O_3.

It should be noted that Montana experienced exceedences of the PM–10 NAAQS in 2000. These exceedences were caused by natural events (wildfires) and Montana has not included these exceedence values for purposes of determining priority classifications for the state. We believe it is acceptable for Montana to not include the data from the natural events for two reasons. First, Montana has an EPA-approved Natural Events Action Plan (NEAP) to address ambient air quality problems caused by wildfires. Second, Montana is retaining its Emergency Episode Action Stages for SO_2, PM–10 and CO because areas in the state have previously been classified as Priority I or II for these pollutants.

Montana has also made administrative changes to the EEAP. We believe the administrative changes are not substantive. Some of the administrative changes clarify aspects of the plan and others are changes in writing style.

IV. Final Action

EPA is approving Montana's Emergency Episode Avoidance Plan submitted on August 2, 2004.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments; we are merely approving administrative changes to Montana's air rules. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective March 6, 2006, without further notice unless the Agency receives adverse comments by February 2, 2006. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. The Montana SIP revision that is the subject of this document does not interfere with the maintenance of the NAAQS or any other applicable requirement of the Act. The August 2, 2004 submittal is a plan to prevent ambient concentrations of air pollutants from reaching levels that may endanger public health and welfare. Therefore, section 110(l) requirements are satisfied.

V. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 6, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 7, 2005.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

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

PART 52—[AMENDED]

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

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

Subpart BB—Montana

■ 2. Section 52.1371 is amended by revising the introductory text and revising the entries "Helena Intrastate AQCR 142" and "Missoula Intrastate AQCR 144" in the table to read as follows:

§ 52.1371 Classification of regions.

The Montana Emergency Episode Avoidance Plan was revised with an August 2, 2004 submittal by the Governor. The August 2, 2004 Emergency Episode Avoidance Plan classified the Air Quality Control Regions (AQCR) as follows:

Air quality control regions (AQCR)	Pollutant				
	Particulate matter	Sulfur oxide	Nitrogen dioxide	Carbon monoxide	Ozone
* * *	*	*	*	*	
Helena Intrastate AQCR 142	III	III	III	III	III
* * *	*	*	*	*	
Missoula Intrastate AQCR 144	III	III	III	III	III

[FR Doc. 05–24366 Filed 12–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2005–TN–0004–200526(a); FRL–8014–6]

Approval and Promulgation of Implementation Plans; Tennessee and Nashville-Davidson County; Approval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving non-regulatory revisions to the Tennessee State Implementation Plan (SIP) and regulatory revisions to the Nashville-Davidson portion of the Tennessee SIP, submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) on January 26, 1999, October 11, 2001, and April 15, 2005. The revisions amend the Vehicle Inspection and Maintenance program in Nashville-Davidson County and the Nashville (Middle Tennessee) 1-Hour Ozone Maintenance Plan.

DATES: This direct final rule is effective March 6, 2006 without further notice, unless EPA receives adverse comment by February 2, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2005–TN–0004, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Agency Web site: http://docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
3. *E-mail: hoffman.annemarie@epa.gov.*
4. *Fax:* 404–562–9019.
5. *Mail:* R04–OAR–2005–TN–0004, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
6. *Hand Delivery or Courier. Deliver your comments to:* Anne Marie

Hoffman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2005–TN–0004. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

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

SUPPLEMENTARY INFORMATION:

I. Background

On June 11, 1997, the Tennessee Air Pollution Control Board approved non-regulatory revisions to the Nashville Ozone Maintenance Plan so that the Plan would remain consistent with Rule 1200–3–29–.03, Motor Vehicle Inspection Requirements. On October 10, 2001, and April 12, 2005, the Tennessee Air Pollution Control Board approved revisions to the Nashville-Davidson County Regulation No. 8, Regulation of Emissions from Light-Duty Motor Vehicles Through Mandatory Vehicle Inspection and Maintenance Program. The final revisions, adopted on April 12, 2005, are consistent with the State of Tennessee Light-Duty Motor Vehicle Inspection and Maintenance regulations and support the Nashville-Davidson County Metropolitan Health Department's efforts to ensure attainment of the 8-hour ozone national ambient air quality standard (NAAQS).

II. Analysis of State's Submittal

The non-regulatory revision to the Nashville Ozone Maintenance Plan submitted to EPA on January, 26, 1999, revises the Nashville Ozone Maintenance Plan so that the Plan remains consistent with Rule 1200–3–29–.03, Motor Vehicle Inspection Requirements. The revision to the Maintenance Plan merely updates the Plan and does not impact any emission calculations or affect any compliance rate calculations in the Maintenance Plan.

The revisions submitted to EPA on October 11, 2001, revise Regulation No. 8 of the Nashville-Davidson County portion of the Tennessee SIP, Regulation of Emissions From Light-Duty Motor Vehicles through Mandatory Vehicle Inspection and Maintenance Program, by changing definitions, on board diagnostics requirements, and fees associated with the program.

The revisions submitted to EPA on April 12, 2005, revise Regulation No. 8 of the Nashville-Davidson County portion of the Tennessee SIP, Regulation of Emissions From Light-Duty Motor Vehicles through Mandatory Vehicle Inspection and Maintenance Program, by expanding the existing regulations to increase the vehicle test weight to 10,000 pounds (gross vehicle weight rating) and adding diesel powered vehicles from 1975 to the present year. The revisions are consistent with the State of Tennessee Light-Duty Motor Vehicle Inspection and Maintenance regulations and will improve air quality in Nashville through vehicle emissions reductions. The emissions reductions expected in the Nashville area from expansion of the inspection and maintenance program will be 0.0231 tons per day of nitrogen oxides (NO_X) and 0.0455 tons per day of volatile organic compounds (VOC).

III. Final Action

EPA is approving the aforementioned regulatory and nonregulatory changes to the Tennessee SIP because they are consistent with the Clean Air Act and EPA requirements.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 6, 2006 without further notice unless the Agency receives adverse comments by February 2, 2006.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 6, 2006 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of

this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 6, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: December 9, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

■ 2. Section 52.2220 is amended by:

■ a. In paragraph (c) under "Table 5–EPA Approved Nashville-Davidson County Regulations" by revising entries for "Regulation No. 8 Regulation of Emissions from Light-Duty Motor Vehicles Through Mandatory Vehicle Inspection and Maintenance Program."

■ b. In paragraph (e) by adding new entry at the end of the table for "Nashville Ozone Maintenance Plan" to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 5.—EPA-APPROVED NASHVILLE-DAVIDSON COUNTY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	* *	*	* *	*
Regulation No. 8	Regulation of Emissions from Light-Duty Motor Vehicles Through Mandatory Vehicle Inspection and Maintenance Program.	4/12/05	January 3, 2006. [Insert first page of publication].	
*	* *	*	* *	*

* * * * * (e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
*	* *	*	* *	*
Nashville 1–Hour Ozone Maintenance Plan.	Nashville 1–Hour Ozone Maintenance Area.	June 11, 2005.	January 3, 2006 [Insert first page number of publication].	

[FR Doc. 05–24413 Filed 12–30–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2005–VA–0013; FRL–8012–3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Redesignation of the Shenandoah National Park Ozone Nonattainment Area To Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a redesignation request and a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The Virginia Department of Environmental Quality (VADEQ) is requesting that the Shenandoah National Park area (the SNP area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). In conjunction with its redesignation request, the Commonwealth submitted a SIP revision consisting of a maintenance plan for the SNP area that provides for continued attainment of the 8-hour ozone NAAQS for the next 10 years. EPA is also approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the 8-hour maintenance plan for the SNP area for purposes of transportation conformity, and is approving those MVEBs. EPA is approving the redesignation request and the maintenance plan revision to the Virginia SIP in accordance with the requirements of the CAA.

DATES: *Effective Date:* This final rule is effective on February 2, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2005–VA–0013. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (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 through *www.regulations.gov* or in hard copy for public inspection 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 Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at *caprio.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 4, 2005 (70 FR 67109), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of Virginia's redesignation request and a SIP revision that establishes a maintenance plan for the SNP area that sets forth how the SNP area will maintain attainment of the 8-hour ozone NAAQS for the next 10 years. The formal SIP revision was submitted by the VADEQ on September 21, 2005 and September 23, 2005. Other specific requirements of Virginia's redesignation request SIP revision for the maintenance plan, and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No adverse public comments were received on the NPR.

II. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the

privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law,Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

III. Final Action

EPA is approving the Commonwealth of Virginia's September 21, 2005 redesignation request and September 23, 2005 maintenance plan because the requirements for approval have been satisfied. EPA has evaluated Virginia's redesignation request, submitted on September 21, 2005, and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the SNP area has attained the 8-hour ozone standard. The final approval of this redesignation request will change the designation of the SNP area from nonattainment to attainment for the 8-hour ozone standard. EPA is approving the associated maintenance plan for this area, submitted on September 23, 2005, as a revision to the Virginia SIP. EPA is approving the maintenance plan for the SNP area because it meets the requirements of section 175A. EPA is also approving the MVEBs submitted by Virginia for this area in conjunction with its redesignation request. The SNP area is subject to the CAA's requirements for basic ozone nonattainment areas until and unless it is redesignated to attainment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also 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, 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 affect the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This 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. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 6, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, to approve the redesignation request, maintenance plan and adequacy determination for MVEBs for the SNP area, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

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

Dated: December 13, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

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

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (e) is amended by adding an entry for the 8–Hour Ozone Maintenance Plan, Madison & Page Cos. (Shenandoah NP), VA Area at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	* *	*	*
8-Hour Ozone Maintenance Plan for the Madison & Page Cos. (Shenandoah NP), VA Area.	Madison County (part) and Page County (part).	9/23/05	1/3/06 [Insert page number where the document begins].	

PART 81—[AMENDED]

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

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

■ 2. Section 81.347 is amended by revising the ozone table entry for the Madison & Page Cos. (Shenandoah NP), VA Area to read as follows:

§ 81.347 Virginia.

* * * * *

VIRGINIA—OZONE (8-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Madison & Page Cos. (Shenandoah NP), VA Area:				
Madison County (part)	1/3/06	Attainment		
Page County (part)	1/3/06	Attainment		
* * *	*	*	*	*

[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. 05–24364 Filed 12–30–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 041029298–5343–06; I.D. 091505E]

RIN 0648–AS38

Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Pacific Coast Groundfish Fishery; California, Washington, and Oregon Fisheries for Coastal Dungeness Crab and Pink Shrimp; Industry Fee Collection System for Fishing Capacity Reduction Loan

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

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to clarify that the fee regulations for the Pacific Coast groundfish fishing capacity reduction program do not apply to any shrimp landed under Washington State fishing licenses for Puget Sound shrimp. The fee regulations remain otherwise unchanged. The purpose of this final rule is to clarify that the fee rules do not apply to the Puget Sound licenses.

DATES: This final rule is effective January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, Financial Services Division, NMFS headquarters, at 301–713–2390.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register**'s website at *http://www.access.gpo.gov/su-docs/aces/aces140.html*.

Background

Section 312(b)-(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b) through (e)) (Magnuson-Stevens Act) generally authorizes fishing capacity reduction programs. In particular, Magnuson-Stevens Act section 312(d) authorizes industry fee systems for repaying fishing capacity reduction loans which finance program costs.

Section 212 of Division B, Title II, of Public Law 108–7 (section 212) specifically authorizes the Pacific Coast groundfish fishing capacity reduction program. Pursuant to section 212, NMFS implemented the groundfish program by a July 18, 2003, **Federal Register** notice (68 FR 42613). On July 13, 2005, NMFS published this program's fee regulations as a final rule (70 FR 40225) which is codified under subpart M at § 600.1102.

The fee regulations require the payment and collection of fees as percentages of the ex-vessel value of certain fish landed in both a "reduction fishery" and in certain "fee-share fisheries". One of the fee-share fisheries is the Washington State fishery for pink shrimp.

Section 212 defines a "fee-share fishery" as "a fishery, other than the reduction fishery, whose members are eligible to vote in a referendum for an industry fee system . . . ." Section 212 also provides that "persons who have been issued . . . Washington . . . Pink shrimp permits shall be eligible to vote in the referendum . . . ." Consequently, under section 212, the fee-share fishery involving Washington pink shrimp is the fishery for pink shrimp conducted by person whom Washington has issued a "pink shrimp permit."

At the time the proposed and final rules were published, NMFS was aware of only one "pink shrimp" fishery. NMFS became aware after publication of both the groundfish program notice and the program's subsequent fee regulations of the existence of two additional Washington State licenses involving pink shrimp other than the "pink shrimp" licenses themselves.

These additional Washington State licenses are the "Puget Sound Shrimp Pots" licenses and "Puget Sound Shrimp Trawl" licenses. Although both these Puget Sound shrimp licenses involve some pink shrimp harvests in Puget Sound, both involve the harvest of other types of shrimp as well. The Washington "pink shrimp" permits issued for Puget Sound were not intended to be included in the Washington fee-share fishery involving pink shrimp.

The fee regulations, consequently, did not specifically exclude from fee payment and collection pink shrimp caught under the two Puget Sound shrimp licenses. The holders of the Puget Sound shrimp licenses did not vote in the groundfish program's fee referendum and NMFS did not include the ex-vessel value of pink shrimp landed under the Puget Sound licenses in the required section 212 formula both for referendum vote weighting and for establishing the reduction loan sub-amounts for whose repayment the reduction fishery and each of the fee-share fisheries were responsible.

The Puget Sound shrimp fisheries are not a fee-share fishery and section 212 does not authorize the payment and collection of fees on any shrimp, including pink shrimp, harvested under the Puget Sound shrimp licenses. Nevertheless, the fee regulations do not clearly exclude pink shrimp harvested under the Puget Sound shrimp licenses because NMFS was unaware of these licenses' existence until after adopting a final fee rule.

Fee collection and payment began on September 8, 2005, and this final rule is necessary to clarify that the fee-share fishery involving Washington pink shrimp includes only that portion of the Washington pink shrimp which is harvested by persons to whom Washington issued ocean pink shrimp licenses.

On November 29, 2005, NMFS published a **Federal Register** document (70 FR 71449) proposing to exclude from the fee any pink shrimp caught under the inshore licenses.

Summary of Comments and Responses

NMFS did not receive any comments to the proposed rule. Consequently, this action adopts the proposed regulations without revision.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

Pursuant to 5 U.S.C. 553(d)(1), the 30–day delay in effectiveness is inapplicable because this rule relieves a restriction. This rule revises the regulations to expressly exclude the holders of the Puget Sound pink shrimp licenses from the groundfish program's fee collection system. These license holders are specifically excluded from regulations that require payment and collection of fees for the Pacific Coast groundfish fishing capacity reduction program. Upon implementation of this rule, these license holders would no longer be required to pay fees for shrimp landed in Puget Sound. Because this rule relieves these license holders from payment of these fees, the 30–day delay in effectiveness is inapplicable and this rule is effective upon publication.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy of the

Small Business Administration that this rule would not have a significant economic impact on a substancial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The factual basis for this certification is found in the proposed rule and is not repeated here. No comments were received on the economic impact of this rule or the certification. As a result, a final regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels.

Dated: December 28, 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 600 is amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

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

Subpart M Specific Fishery or Program Fishing Capacity Reduction Regulations

■ 2. In § 600.1102, the definition of "Fee-share fishery" in paragraph (b) is revised, and paragraphs (d)(2)(vi) and (i)(1)(vi) are revised to read as follows:

§ 600.1102 Pacific Coast groundfish fee.

* * * * *

(b) * * *

Fee-share fishery means each of the fisheries for coastal Dungeness crab and pink shrimp in each of the States of California and Oregon and the fishery for coastal Dungeness crab and ocean pink shrimp in the State of Washington.

* * * * *

(d) * * *

(2) * * *

(vi) Washington ocean pink shrimp fee-share fishery, $259,400.

* * * * *

(i) * * *

(1) * * *

(vi) All fee collections from the Washington ocean pink shrimp fee-share fishery shall be accounted for in a Washington ocean shrimp fee-share fishery subaccount, and

* * * * *

[FR Doc. 05–24697 Filed 12–30–05; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 1
Tuesday, January 3, 2006

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 30, 31, 32, 33, and 35

Expanded Definition of Byproduct Material (NARM Rulemaking), Availability of Web Page

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has crafted a Web page for the rulemaking titled "Expanded Definition of Byproduct Material," also known as the "NARM rulemaking." The Energy Policy Act of 2005 requires the NRC to establish a regulatory framework for the expanded definition of byproduct material to include certain naturally occurring and accelerator-produced radioactive material through rulemaking. Documents in support of this rulemaking will be posted on the Web page via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov* as they become publicly available.

DATES: The NRC is not soliciting comments at this time; however, NRC will request formal public comments when a notice of proposed rulemaking is published in the **Federal Register.**

ADDRESSES: Documents related to the NARM rulemaking may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. They may also be viewed and downloaded electronically from the "Expanded Definition of Byproduct Material (NARM Rulemaking)" Web page via the rulemaking Web site *http://ruleforum.llnl.gov* and selecting "Other Rulemaking-Related Comment Requests" from the selection menu. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.* For questions related to the NARM rulemaking, contact Ms. Lydia Chang, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6319, e-mail *lwc1@nrc.gov.*

SUPPLEMENTARY INFORMATION: Section 651(e) of the Energy Policy Act of 2005 (the Act) expanded the definition of *Byproduct material* in section 11e. of the Atomic Energy Act of 1954, to include certain naturally occurring and accelerator-produced radioactive material (NARM). The Act also required the NRC to provide a regulatory framework for licensing and regulating the additional byproduct material. The NRC is developing a rulemaking to revise its regulations to expand the definition of *Byproduct material* to include the following materials produced, extracted, or converted after extraction for use for a commercial, medical, or research activity:

(1) Any discrete source of radium-226;

(2) Any accelerator-produced radioactive material; and

(3) Any discrete source of naturally occurring radioactive material, other than source material, that the Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat to public health and safety or the common defense and security similar to the threat posed by a discrete source of radium-226.

To aid the rulemaking process, NRC held a roundtable public meeting on November 9, 2005, to solicit input from stakeholders on the NARM rulemaking. Participants for the roundtable public meeting included representatives from other Federal agencies, State governments, the medical community, professional organizations, public interest groups, and members of the general public. The transcripts from the November 9, 2005, public meeting and a meeting summary have been posted on the NARM rulemaking Web page with other supporting documents. Additional documents may be added as they become publicly available, including the draft proposed rule. The Web page can be accessed via NRC's rulemaking Web site at *http://ruleforum.llnl.gov* under "Other Rulemaking-Related Comment Requests" selection menu. The specific link to the NARM rulemaking Web page is *http://ruleforum.llnl.gov/cgi-bin/rulemake?source=narm&st=ipcr.* Once the proposed rule is published in the **Federal Register,** the NARM rulemaking Web page would still be accessed at *http://ruleforum.llnl.gov* but relocated under "Proposed Rules" selection menu.

Dated at Rockville, Maryland, this 21st day of December, 2005.

For the Nuclear Regulatory Commission.

Scott W. Moore,

Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–8218 Filed 12–30–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. NHTSA–2005–23454]

RIN 2127–AJ73

Amendment to Grant Criteria for Alcohol-Impaired Driving Prevention Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to amend the regulations that implement the section 410 program, under which States can receive incentive grants for alcohol-impaired driving prevention programs. The proposed amendments implement changes that were made to the section 410 program by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU).

As a result of SAFETEA–LU, States are provided with two alternative means to qualify for a section 410 grant. Under the first alternative, States may qualify as a "low fatality rate State" if they have an alcohol-related fatality rate of 0.5 or

less per 100 million vehicle miles traveled (VMT). Under the second alternative, States may qualify as a "programmatic State" if they demonstrate that they meet three of eight grant criteria for fiscal year 2006, four of eight grant criteria for fiscal year 2007, and five of eight grant criteria for fiscal years 2008 and 2009. Qualifying under both alternatives would not entitle the State to receive additional grant funds. SAFETEA–LU also provides for a separate grant to the ten States that are determined to have the highest rates of alcohol-related driving fatalities.

This notice of proposed rulemaking proposes criteria States must meet and procedures they must follow to qualify for section 410 grants, beginning in fiscal year 2006.

DATES: Written comments may be submitted to this agency and must be received by February 2, 2006.

ADDRESSES: Comments should refer to the docket number and be submitted (preferably in two copies) to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging on to the Docket Management System (DMS) Web site at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should identify the Docket number of this document. You may call the docket at (202) 366–9324. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For programmatic issues: Ms. Carmen Hayes, Highway Safety Specialist, Injury Control Operations & Resources (ICOR), NTI–200, or Jack Oates, Chief, Implementation Division, ICOR, NTI–200, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2421. For legal issues: Mr. Roland (R.T.) Baumann III, Attorney-Advisor, Legislation and General Law, Office of the Chief Counsel, NCC–113, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–1834.

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I. Background

The Alcohol Impaired Driving Countermeasures program was created by the Drunk Driving Prevention Act of 1988 and codified at 23 U.S.C. 410. As originally conceived, States could qualify for basic and supplemental grants under the section 410 program if they met certain criteria. To qualify for a basic grant, States had to provide for an expedited driver's license suspension or revocation system and a self-sustaining impaired driving prevention program. To qualify for a supplemental grant, States had to be eligible for a basic grant and provide for a mandatory blood alcohol testing program, an underage drinking program, an open container and consumption program, or a suspension of registration and return of license plate program.

During the decade and a half since the inception of the section 410 program, it has been amended several times to change the grant criteria and grant award amounts. The most recent amendments prior to those leading to today's action arose out of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178. TEA–21 amended both the grant amounts and the criteria that States had to meet to qualify for both basic and supplemental grants under the section 410 program. Under TEA–21, States qualified for a "programmatic" basic grant by meeting five of seven of the following criteria: An administrative driver's license suspension or revocation system; an underage drinking prevention program; a statewide impaired-driving traffic enforcement program; a graduated driver's license system; a program to target drivers with a high blood alcohol concentration (BAC) level; a program to reduce drinking and driving among young adults (between the ages of 21 and 34); and a BAC testing program. In addition, States could qualify for a "performance" basic grant by demonstrating that the percentage of fatally injured drivers in the State with a BAC of 0.10 or more had decreased in each of the three previous calendar years and that the percentage of fatally injured drivers with a BAC of 0.10 or more in the State was lower than the average percentage for all States in the same calendar year. Supplemental grants were also available for States that received a programmatic and/or performance grant and met additional criteria.

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) was enacted into law (Pub. L. 109–59). Section 2007 of SAFETEA–LU made new amendments to 23 U.S.C. 410. These amendments again modified the grant criteria and the award amounts and made a number of structural changes to streamline the program. Today's action proposes to amend the Section 410 regulation to implement those changes.

II. Summary of Proposed Changes to the Regulation

SAFETEA–LU discontinues one type of grant under the section 410 program—the supplemental grant—retaining what is essentially equivalent to the basic grant under the old program. The proposed rule implements this change, detailing the programmatic criteria a State needs to meet under the new program.

Under SAFETEA–LU, the number of programmatic criteria available for selection by a State seeking to qualify for a grant increases from seven to eight. At the same time, the number of these criteria that a State must satisfy to receive a grant decreases from five (under the old section 410 program) to three in the first fiscal year, four in the following fiscal year, and five in the remaining fiscal years of the program. The proposed rule implements these changes, which have the combined effect of increasing the States' qualification options for the duration of the program while reducing the States'

compliance requirements for the first two years of the program.

SAFETEA–LU directs that States with low alcohol-related fatality rates, based on the agency's Fatality Analysis Reporting System (FARS), be awarded grants without the need to satisfy any of these programmatic criteria. These States will qualify for funds without the administrative burden of submitting an application. Also, the ten States with the highest alcohol-related fatality rates, based on the FARS, will receive an additional grant with only minimal procedural requirements. The proposed rule streamlines the section 410 program by providing greatly simplified procedures for these high- and low-fatality rate States to receive grant funds.

Finally, the proposed rule codifies the SAFETEA–LU requirement that grant funds be distributed to the States based on the formula that has applied for years to State highway safety programs under 23 U.S.C. 402. This will ensure the full and equitable distribution of funds under the section 410 program.

III. The Section 410 Program Under SAFETEA–LU

The SAFETEA–LU amendments, which take effect in FY 2006, retain the basic grant structure of the old section 410 Program but eliminate all supplemental grants. States may qualify for a grant in one of two ways. A State determined to be a "low fatality rate State" by virtue of having an alcohol-related fatality rate of 0.5 or less per 100 million VMT is eligible for a grant, as further described under section III.A. Under SAFETEA–LU, fatality rates are to be determined by using NHTSA's FARS data. States may also qualify by meeting certain programmatic requirements. A State may qualify as a "programmatic State" by demonstrating compliance with several specified criteria, the number varying by fiscal year, as further described under section III.B. Five programmatic criteria are continued from the TEA–21 basic grant criteria with minor modifications. SAFETEA–LU eliminates two programmatic criteria from the TEA–21 basic criteria—the graduated driver's licensing system and the young adult drinking and driving program. These criteria are replaced by two new programmatic criteria—a prosecution and adjudication outreach program and an alcohol rehabilitation or DWI court program. An eighth programmatic criterion, the self-sustaining impaired driving prevention program, existed under the TEA–21 as a supplemental grant criterion and is continued under SAFETEA–LU as the equivalent of a programmatic basic grant criterion under the old section 410 program.

Under SAFETEA–LU, grant funds are to be allocated to qualifying States on the basis of the apportionment formula in 23 U.S.C. 402(c)—75 percent in the ratio which the population of each State bears to the total population of all qualifying States and 25 percent in the ratio which the public road mileage in each State bears to the total public road mileage of all qualifying States. The total amount of funding available each fiscal year for these grants will be known only after the agency identifies the States that are eligible to receive a new category of grants as "high fatality rate States."

The SAFETEA–LU amendments include provisions for separate grants to be made to these "high fatality rate States," as further described under section III.C. Each of the ten States with the highest alcohol-related fatality rates, based on FARS data, will be eligible for a separate grant. The statute provides that up to 15 percent of the amount available to carry out the section 410 program shall be available for grants to these States. Funds will be allocated among the ten qualifying high fatality rate States based on the apportionment formula in 23 U.S.C. 402(c), with the limitation that no more than 30 percent of the funds available for these grants may be awarded to any one State.

The section 410 program derives its definition of "State" from 23 U.S.C. 401, which includes any of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Accordingly, each of these entities is eligible to participate in this program by submitting an application to the agency or by qualifying as a low or high fatality rate State, provided reportable FARS data exist for those jurisdictions.

A. Low Fatality Rate States (23 CFR 1313.5)

Under TEA–21, States could qualify for one particular grant based on performance or another grant by meeting programmatic criteria. States that met both sets of requirements could receive two grants. SAFETEA–LU discontinues the two-grant approach and provides instead for two alternative means of receiving a single grant, based either on a performance or programmatic approach.

Under SAFETEA–LU, the performance-based measure requires States to have an alcohol related fatality rate of 0.5 or less per 100 million VMT as of the date of the grant, as determined using the agency's most recent FARS data. As directed by SAFETEA–LU, the agency will calculate the alcohol-related fatality rate per 100 million VMT for each State using the most recent final FARS data available prior to the date of grant awards. Any State that is determined to have a fatality rate of 0.5 or less per 100 million VMT will be considered eligible for a grant under section 410 as a low fatality rate State. States for which no reportable FARS data exist will not be evaluated for qualification as low fatality rate States.

Prior to the start of the application period (on or about June 1 of that fiscal year), the agency will inform States that qualify for a grant based on low fatality rates. These States will not be required to submit an application demonstrating compliance with the programmatic requirements. They will, however, be required to submit information that identifies how the grant funds will be used in accordance with the requirements of SAFETEA–LU. If the agency experiences a delay in making fatality rate information available, all States should prepare and submit information demonstrating compliance with the required number of programmatic criteria. A State should not assume qualification for section 410 funding as a "low fatality rate State" until the information is made available by the agency.

B. Programmatic States (23 CFR 1313.6)

Prior to the enactment of SAFETEA–LU, the section 410 grant criteria included the following: An administrative license suspension or revocation system; an underage drinking prevention program; a statewide traffic enforcement program; a graduated driver's license system; a program to target drivers with high BACs; a program to reduce drinking and driving among young adults; and a BAC testing program. Under SAFETEA–LU, the graduated driver's license system and the young adult drinking and driving program have been eliminated and two new criteria have been added—a prosecution and adjudication outreach program and an alcohol rehabilitation or DWI court program. In addition, the self-sustaining impaired driving prevention program (previously a supplemental grant criterion) has been retained as one of the criteria for a new grant. The remaining criteria from TEA–21 (some with modifications) continue to be features of the section 410 program under SAFETEA–LU.

To qualify for a section 410 grant in FY 2006 based on programmatic criteria, SAFETEA–LU requires a State to demonstrate compliance with three of the following eight criteria: A high

visibility impaired driving enforcement program; a prosecution and adjudication outreach program; a BAC testing program; a high-risk drivers program; an alcohol rehabilitation or DWI court program; an underage drinking prevention program; an administrative driver's license suspension or revocation system; and a self-sustaining impaired driving prevention program. States will be required to meet four of eight criteria to qualify in FY 2007 and five of eight criteria to qualify in each subsequent fiscal year. The details of these criteria are set forth below.

The terms "offender" and "offense" are used in this proposal and refer to being detected and recorded as an impaired driver. A "first offense" does not necessarily mean that the individual involved had never driven while impaired prior to that offense. Overall, the probability of being detected while driving is roughly 1 to 2 percent. Thus the chances are small that one or more offenses truly reflect the only times that individual has driven while impaired.

i. High Visibility Impaired Driving Enforcement Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

A State program to conduct a series of high visibility, statewide law enforcement campaigns in which law enforcement personnel monitor for impaired driving, either through the use of sobriety check points or saturation patrols, on a nondiscriminatory, lawful basis for the purpose of determining whether the operators of the motor vehicles are driving while under the influence of alcohol—

(A) If the State organizes the campaigns in cooperation with related periodic national campaigns organized by the National Highway Traffic Safety Administration, except that this subparagraph does not preclude a State from initiating sustained high visibility, Statewide law enforcement campaigns independently of the cooperative efforts; and

(B) If, for each fiscal year, the State demonstrates to the Secretary that the State and the political subdivisions of the State that receive funds under this section have increased, in the aggregate, the total number of impaired driving law enforcement activities at high incident locations (or any other similar activity approved by the Secretary) initiated in such State during the preceding fiscal year by a factor that the Secretary determines meaningful for the State over the number of such activities initiated in such State during the preceding fiscal year.

Agency's Proposal (23 CFR 1313.6(a)). Under this criterion, the agency proposes to require a State to: (1) Participate in a national high visibility impaired driving law enforcement campaign organized by NHTSA; (2) conduct a series of additional high visibility law enforcement campaigns within the State throughout the year; and (3) use sobriety checkpoints and/or saturation patrols at high-risk locations throughout the State, conducted in a highly visible manner and supported by publicity. A State could qualify by establishing a program that uses checkpoints, saturation patrols or both. The State would be required to participate in the National Impaired Driving Crackdown and conduct sustained highly visible enforcement throughout the remainder of the year.

Under the proposed rule, the State would be required to show that each of the State's participating law enforcement agencies will conduct checkpoints and/or saturation patrols on at least four nights during the National impaired driving campaign organized by NHTSA and at least monthly during the remainder of the year. The State would be required to provide information on the coordination of these activities, including the State's efforts to publicize the law enforcement activities through the use of paid and/or earned media plans. States should publicize these activities before, during and after law enforcement operations. Publicity before the operation creates general deterrence and encourages "would be" impaired drivers to stay where they are or find a safe ride home. Publicity during the event (such as ride-alongs for members of the media) increases the credibility of advertisements and demonstrates to the public that law enforcement is, in fact, taking place in their community. Publicity after the event reinforces law enforcement's commitment by reporting on the number of individuals arrested and the consequences (such as loss of license, time in jail, court costs and attorney fees) that they experience.

Basis for Proposal. Highly visible, widely publicized and frequently conducted impaired-driving traffic enforcement programs are effective in reducing alcohol-related fatalities. NHTSA research strongly supports the use of roadside sobriety checkpoints to reduce impaired driving deaths and injuries. Decreases in alcohol-related crashes have been reported consistently in States where checkpoints are employed. A study of a highly publicized Statewide sobriety checkpoint program ("Checkpoint Tennessee") found a 20 percent reduction in impaired driving-related fatal crashes, when compared to five surrounding States with no intervention during the same period. Saturation patrols or similar enhanced impaired driving enforcement efforts, particularly when well-coordinated, conducted in a highly visible manner and accompanied by publicity, can also be effective, though research to date on the use of saturation patrols has shown they yield more modest results.

A grant criterion for Statewide programs to conduct highly visible law enforcement activities has been a feature of the section 410 program since 1991. Initially, only roadblock or checkpoint programs were considered acceptable under this criterion, but the criterion was expanded later to permit other intensive and highly publicized traffic enforcement techniques.

In recent years, NHTSA has coordinated the National "You Drink & Drive. You Lose" crackdown campaign and promoted sustained highly visible law enforcement activities during other high-risk times of year. Thousands of law enforcement agencies have participated in the crackdown during each of the campaigns and Congress has consistently provided dedicated funding to support the law enforcement activities and the use of paid media. In 2002, NHTSA identified 13 Strategic Evaluation States (SES) with especially high numbers and/or rates of alcohol-related fatalities. These States received technical support and financial assistance to conduct highly visible impaired driving enforcement efforts during the crackdowns and on a sustained basis throughout the year. In 2003, for the first time since 1999, the nation experienced a decline in alcohol-related fatalities (511 fewer fatalities, a 2.9 percent reduction from the previous year). A decline occurred also in 2004 (411 fewer fatalities; a 2.4 percent reduction from the previous year). Much of this decline, particularly in 2003, occurred in the States participating in the SES program.

To guide the SES, NHTSA outlined criteria to be followed to ensure that law enforcement efforts are coordinated, frequent, visible, and publicized through paid and earned media. These criteria have been used as guidance in developing the elements that States would follow under the proposed rule to qualify for a grant under the high visibility impaired driving enforcement program criterion.

Demonstrating Compliance (23 CFR 1313.6(a)(3)). To demonstrate compliance in the first fiscal year that a State receives a grant based on this criterion, the State would submit a comprehensive plan for conducting its high visibility impaired driving law enforcement program. The plan would be required to contain various elements, including guidelines, policies or operation procedures, approximate

dates and projected locations of planned law enforcement activities, a list of law enforcement agencies expected to participate, a paid media buy plan (if the State buys media) and a description of anticipated earned media activities designed to generate awareness before, during and after the operation.

In subsequent fiscal years, the State would submit information evaluating the results of the prior year's plan and an updated plan for the upcoming year. SAFETEA–LU provides that States must increase the number of impaired driving law enforcement activities by a factor determined to be meaningful by the agency. The proposed rule would address this requirement by providing that the plan must demonstrate that a sufficient number of law enforcement agencies will participate in the effort during the first year a State qualifies for a grant under this criterion and increase participation in subsequent years. It would require that the plan demonstrate that State Police and local law enforcement agencies collectively serving at least 50 percent of the State's population or serving geographic areas that account for at least 50 percent of the State's alcohol-related fatalities will participate in the first year a State receives a grant based on this criterion, 55 percent in the second year, 60 percent in the third year, and 65 percent in the fourth year. Recent experience in the SES grant program has shown that most States are able to prepare a plan and participate at the 50 percent level in the first fiscal year, and then expand participation from that level in subsequent years. Additionally, after the first fiscal year, to maintain a State's qualification under this criterion, the State would be required to provide data on the total number of impaired driving law enforcement activities conducted in the State during the preceding year.

ii. Prosecution and Adjudication Outreach Program

Several components of the criminal justice system are involved when an individual is arrested for impaired driving. SAFETEA–LU includes, for the first time in Section 410, a criterion that addresses the responsibilities of the individuals that prosecute and adjudicate impaired driving cases. The criterion is focused specifically on improving the prosecution and adjudication of DWI offenses.

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

A State prosecution and adjudication program under which—

(A) The State works to reduce the use of diversion programs by educating and informing prosecutors and judges through various outreach methods about the benefits and merits of prosecuting and adjudicating defendants who repeatedly commit impaired driving offenses;

(B) The courts in a majority of the judicial jurisdictions of the State are monitored on the courts' adjudication of cases of impaired driving offenses; or

(C) Annual statewide outreach is provided for judges and prosecutors on innovative approaches to the prosecution and adjudication of cases of impaired driving offenses that have the potential for significantly improving the prosecution and adjudication of such cases.

Agency's Proposal (23 CFR 1313.6(b)). Under this criterion, the agency proposes to require a State either to provide an outreach and education program available to court professionals that focuses on the negative aspects of using diversion programs, or provide an outreach and education program available to court professionals that details innovative approaches to the prosecution and adjudication of impaired driving offenses, or monitor State courts through the collection of information in a majority of jurisdictions (at least 50 percent) for adjudication outcomes of impaired driving offenses.

To meet this criterion, a State would be required to submit evidence that it is currently performing one or more of these activities. States wishing to comply based on an outreach and education program are encouraged to provide traffic safety outreach and education to judges and prosecutors, using NHTSA recommended courses. The State would be required to conduct these education and outreach programs annually and use only materials that the agency has reviewed and approved for use. The proposed rule would allow a State to comply with the outreach and education program by demonstrating that the State employs a Traffic Safety Resource Prosecutor (TSRP) and a State Judicial Educator, because the agency believes similar benefits can be achieved through deployment of these professionals. States wishing to comply based on a court monitoring program would be required to collect data on offender sentencing.

Basis for Proposal. States that institute outreach programs provide an effective means to educate prosecutors and judges about the shortcomings of diversion programs in reducing impaired driving recidivism and to provide information on more effective sentencing alternatives. Alternative sanctions for DWI offenses may include home detention with electronic monitoring, intensive probation supervision, daily reporting centers, and sanctions such as vehicle impoundment, license plate confiscation or ignition interlock installation. An increase in the number of court systems that have access to this information will result in less reliance on diversion programs and more on sentencing alternatives that are more effective in modifying impaired behavior.

It is important for States to have a process in place to record the adjudications of cases involving impaired drivers. The collection of this information is vital to State interests to focus on localities that are not prosecuting and adjudicating defendants who commit repeat DWI offenses.

The agency has previously identified as problematic the use of pre-conviction diversion programs. Diversion programs, which are permitted in many States, are presented by prosecuting attorneys as an alternative to the traditional adjudication and sanction of DWI offenses and the court may accept or deny their use. Where these programs are accepted, the court may dismiss criminal charges against DWI offenders after completion of a treatment program. This restricts the type of information that would ordinarily be added to an offender's driving record and enables individuals with multiple offenses to be treated as first offenders. Diversion programs not only allow offenders to avoid sanctions but also increase the possibility that repeat offenders avoid identification.

Prosecutors and judges should actively fulfill their respective functions in the prosecution and adjudication of impaired driving cases. Where State laws provide for diversion of impaired driving cases, judges and prosecutors should exercise oversight in its use. Oversight includes approving diversion only where permitted by law and insuring that diverted defendants' records of impaired driving are available for enhancement in the event of recidivism.

Demonstrating Compliance (23 CFR 1313.6(b)(3)). To demonstrate compliance in the first fiscal year for an outreach and education program under the proposed rule, the State would be required to provide information that details the proposed content of the course covering either information on reducing the use of diversion programs or alternative approaches to sanctioning DWI offenders. A State would certify that its program is provided on an annual basis. Alternatively, the State would be allowed to submit information indicating its use of a TSRP and State Judicial Educator to provide NHTSA-

approved educational programs to prosecutors and judges and a description of the courses presented and the level of judicial and prosecutor contact.

To demonstrate compliance in the first fiscal year for a court-monitoring program, the State would be required to provide information that includes the name and location of the courts covered (a majority of jurisdictions, at least 50 percent, must be included) and the kind of data collected. At a minimum, the data collected would be required to include a list of all original criminal or traffic-related charges against the defendant, the final charges brought by the prosecutor, and the disposition of the charges or sentence provided.

To demonstrate compliance in a subsequent fiscal year for an outreach and education program, the State would be required to provide additional information if course content has been altered from the previous year. A compliant State would be required to continue to certify that the outreach is conducted annually. For States complying because of their use of a TSRP and State Judicial Educator, no information need be provided unless there has been a change in the status of these positions. A compliant State would be required to continue to certify the use of these positions.

To demonstrate compliance in a subsequent fiscal year for a court-monitoring program, the State would be required to submit a statement indicating it plans to retain a compliant court-monitoring program. Information on data collection elements and the courts involved in the program would not be required unless there is a change from the previous year.

iii. BAC Testing Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

> An effective system for increasing from the previous year the rate of blood alcohol concentration testing of motor vehicle drivers involved in fatal crashes.

Agency's Proposal (23 CFR 1313.6(c)). The agency is proposing to evaluate a State's performance based on a review of available FARS data. For each fiscal year, the agency would review the most recent final FARS data available for each State prior to the date of award and compare the BAC testing percentages of each State against the final FARS data for the same State in the previous year. A State could qualify based on data if the data shows that the State's percentage of BAC testing among drivers involved in fatal motor vehicle crashes has improved from the previous year.

Basis for Proposal. Improving the rate of testing for blood alcohol concentration (BAC) of drivers involved in fatal crashes continues to be a critical component of any alcohol-impaired driving program. Increased BAC testing helps us to define the problem, identify offenders, and take steps to develop effective solutions to reduce the tragic consequences of impaired driving. According to FARS data, approximately 50 percent of all drivers involved in fatal crashes (both surviving and killed) in 2003 were tested for BAC and the results are known. NHTSA estimates that thousands of drivers each year are impaired by alcohol when involved in a fatal crash, but are not detected or charged because a BAC test was not administered or the results are not available. If more drivers were tested for BAC and the results made available, estimates of alcohol involvement in fatal crashes would be more accurate, more offenders would be prosecuted and the data collected would facilitate the development of better alcohol-impaired driving countermeasures.

Mandatory BAC testing was a supplemental grant criterion under section 410 since the inception of the program. TEA–21 made it a criterion for a basic grant, allowing a State to qualify if, during the first two years, the State implemented an effective system for improving the rate of testing. To qualify in subsequent years, the State had to have a testing rate that was above the national average. SAFETEA–LU continues to include this criterion for a grant with an important modification. The focus of the requirement has shifted from a system that provides for a testing rate above the national average to one that demonstrates an improved rate of testing from year to year.

Demonstrating Compliance (23 CFR 1313.6(c)(3)). To demonstrate a significant BAC testing increase, the Agency proposes that qualifying States show an increase from one year to the next of at least 5 percentage points. States with testing rates above 50 percent would be required to show an increase of at least 5 percent in the testing of untested drivers. For example, if a State has a testing rate of 65 percent, it would have to test at least 5 percent of the 35 percent of drivers that remained untested after fatal vehicle crashes, for an increase in testing of 1.75 percent of drivers involved in fatal crashes over the previous year in order to meet this criterion.

For each fiscal year, to demonstrate compliance for a grant based on this criterion under the proposed rule, a State need only submit a statement indicating compliance with the BAC testing requirements of this section (*i.e.*, a State whose testing rate is under 50 percent would be required to increase its testing rate by 5 percent each year and a State whose testing rate is 50 percent or greater would need to achieve an increase of 5 percent of untested drivers each year). Prior to the application period (on or about June 1 of that fiscal year), NHTSA would produce a list of States, available through its regional offices, that are determined to qualify under this criterion based on a review of FARS data.

iv. High Risk Drivers Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

> A law that establishes stronger sanctions or additional penalties for individuals convicted of operating a motor vehicle while under the influence of alcohol whose blood alcohol concentration is 0.15 percent or more than for individuals convicted of the same offense but with a lower blood alcohol concentration. For purposes of this paragraph, "additional penalties" includes—
>
> (A) A 1-year suspension of a driver's license, but with the individual whose license is suspended becoming eligible after 45 days of such suspension to obtain a provisional driver's license that would permit the individual to drive—
>
> (i) Only to and from the individual's place of employment or school; and
>
> (ii) Only in an automobile equipped with a certified alcohol ignition interlock device; and
>
> (B) A mandatory assessment by a certified substance abuse official of whether the individual has an alcohol abuse problem with possible referral to counseling if the official determines that such a referral is appropriate.

Agency's Proposal (23 CFR 1313.6(d)). The agency is proposing to require that a compliant State law mandate specified additional penalties for individuals convicted of operating a motor vehicle with a 0.15 BAC or higher. These additional penalties would include a one-year license suspension, except that States could permit the offender to drive after 45 days with a restricted license provided that a state-certified ignition interlock (meeting NHTSA's ignition interlock performance specifications; *see* 57 FR 11772 for the most recent specifications) is installed in every vehicle owned and every vehicle operated by the offender. This restriction is meant to ensure that high-risk offenders cannot easily circumvent the driving restrictions. The restricted license could permit driving to places of employment or school. The penalties would also include a mandatory

assessment by a certified substance abuse official. If it is determined after assessment that an offender must seek treatment, a State could also permit the offender to drive with a restricted license to a treatment facility.

The requirements of this criterion should not be confused with those of 23 U.S.C. 164, the repeat intoxicated driver laws grant program. Under section 164, a State must provide a one-year hard license suspension to any individual convicted of repeat DWI offenses within a five-year period. There are no exceptions under that program that would allow a driver to operate a motor vehicle before one year has passed. SAFETEA–LU and the revised Section 410 requirements do not vary this requirement. If a State, in the interest of complying with this programmatic requirement under section 410, revises its law to allow high BAC offenders committing multiple offenses to receive a restricted license after 45 days, it will not remain compliant with section 164. In order to comply with both programs, the State must view the requirements under this criterion as applying to first offenses only.

Basis for Proposal. NHTSA is aware of the dangers posed by drinking drivers with high blood alcohol concentrations (BACs). Data from the FARS indicate that 8,565 people were killed in motor vehicle crashes in 2004 that involved at least one driver with a BAC of 0.15 or higher. NHTSA estimates that thirteen percent of all drivers involved in a fatal crash have a BAC of 0.15 or greater. Of all drivers involved in fatal crashes with a positive BAC, fifty-five percent have a BAC of 0.15 or more.

The rationale for high-BAC sanctioning systems is that DWI offenders with higher BACs pose a greater risk than offenders with lower BACs. There is evidence that DWI offenders with higher BACs are more likely than DWI offenders with lower BACs to be involved in a crash (Zador, Krawchuck, Voas, 2000; Compton *et al.*, 2002). After adjusting for variables such as driver age and gender, the relative risk of a crash of any severity increases as BAC increases (Compton *et al.*, 2002). Compared to drivers with zero BACs, the relative risk of a crash is 5 times higher for a BAC of .10, 22 times higher for a BAC of .15, 82 times higher for a BAC of .20, and 154 times higher for a BAC of .25 or higher.

The objective of stronger sanctions targeting high BAC drivers is to reduce recidivism among this high-risk group of offenders by increasing the certainty and severity of punishment. Although historically some prosecutors routinely negotiated and some judges routinely applied stronger sanctions for high-BAC offenders within the framework of the general impaired driving statutes, many high BAC offenders did not receive enhanced penalties. In a high-BAC sanctioning system, the high-BAC threshold is established above the *per se* level for a standard offense, currently set by all States at .08 BAC.

TEA–21 included a "High BAC" basic criterion for State programs that targeted high BAC drivers. Under TEA–21, States needed to demonstrate a system for imposing enhanced penalties on drivers who had been convicted of operating a motor vehicle while under the influence of alcohol and determined to have a high BAC. These enhanced penalties were required to be either more severe or more numerous than those applicable to persons who were convicted of operating a motor vehicle while under the influence of alcohol, but not determined to have a high BAC. Under TEA–21, NHTSA defined a high BAC threshold as being any level above the standard BAC level at which sanctions for non-commercial drivers began to apply, provided sanctions began at or below .20 BAC. NHTSA did not specify particular minimum sanctions, but the sanctions could include longer terms of license suspension, increased fines, additional or extended sentences of confinement or vehicle sanctions along with mandatory assessment and treatment, as determined appropriate.

Demonstrating Compliance (23 CFR 1313.6(d)(2)). To demonstrate compliance in the first fiscal year under the proposed rule, a State would be required to submit a copy of its law that provides for stronger sanctions or additional penalties along with mandatory assessment and treatment for individuals convicted of an impaired driving offense with a BAC of 0.15 or higher. The law would be required to specify the penalties that are to be imposed on drivers with a 0.15 or higher BAC and, at a minimum, these penalties would include a one-year license suspension and a mandatory assessment by a certified substance abuse official and referral to treatment as appropriate. The State law could permit an exception to the one-year driver's license suspension and permit a high-risk offender to drive to places of employment, school, or treatment after 45 days, if an ignition interlock device is installed on all vehicles owned and all vehicles operated by the offender.

To demonstrate compliance in subsequent fiscal years under the proposed rule, the State need only submit a copy of any changes to the State's law. If there have been no changes in the State's law since the previous year's submission, the State need only submit a certification to that effect.

v. Alcohol Rehabilitation or DWI Court Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

> A program for effective inpatient and outpatient alcohol rehabilitation based on mandatory assessment and appropriate treatment for repeat offenders or a program to refer impaired driving cases to courts that specialize in driving while impaired cases that emphasize the close supervision of high-risk offenders.

Agency's Proposal (23 CFR 1313.6(e)). The agency proposes two alternative methods for States to meet this criterion: (1) A State would be required to demonstrate an effective inpatient and outpatient rehabilitation program based on State law that requires mandatory assessments by a certified substance abuse official and required referral to treatment as determined appropriate for repeat offenders (defined under this criterion as those individuals committing a second or subsequent DWI offense within five years); provide a system to track the treatment process of repeat offenders to ensure completion; and offer educational opportunities for court professionals regarding treatment approaches and sanctions; or (2) a State would be required to have a State sanctioned DWI court in operation that covers high-risk offenders (defined under this criterion as repeat offenders or individuals convicted of a DWI offense with a BAC higher than .15) and abide by the Ten Guiding Principles of DWI Courts (as of the publication of this proposal available at *http://www.ndci.org/pdf/Guiding_Principles_of_DWI_Court.pdf*), as established by the National Association of Drug Court Professionals, and generally follow the characteristics of a DWI Court as described in this section.

Basis for Proposal. High-risk and repeat offenses are often symptoms of alcohol abuse or dependency. In order to confront the problem of regular alcohol misuse and impaired driving, section 410, for the first time, enables States to qualify for grant funding based on their use of certain treatment methods. Studies have shown that programs that employ intensive supervision have resulted in a significant reduction in DWI recidivism (Wiliszowski, Lacey, 1997). More specifically, studies of repeat offenders, a population involving approximately ten percent of alcohol-related deaths annually, indicated that regular contact

with a concerned person, such as a judge, positively impacted drinking and driving decisions (Wiliszowski, Murphy, Jones, Lacey, 1996).

The basis for an effective inpatient and outpatient alcohol rehabilitation program is an assessment by a certified substance abuse official that is mandated by State law. The law must also require judges to order repeat offenders to treatment if determined necessary by the assessment. The State must have a means to track the progress of repeat offenders ordered to treatment and to ensure that the goals of the assessment are met. Education for court professionals on alcohol abuse, issues surrounding treatment, basic treatment approaches, and treatment options that are available to defendants in a given area also are part of an effective system.

DWI courts can also be used to combat the problem of recidivism by high-risk offenders. A DWI Court uses all criminal justice stakeholders (judges, prosecutors, defense attorneys, probation officers and others) along with alcohol and drug treatment professionals. This group of professionals comprises a "DWI Court Team," and uses a cooperative approach to systematically change participant behavior. This approach includes identification and referral of participants early in the legal process to a full continuum of drug and alcohol treatment and other rehabilitative services. Compliance with treatment and other court-mandated requirements is verified by frequent alcohol/drug testing, close supervision and interaction with the judge in a non-adversarial court review hearing. During these review hearings, the judge devises an appropriate response for participant compliance (or non-compliance) in an effort to further the team's goals to encourage pro-social sober behaviors that will prevent DWI recidivism.

Demonstrating Compliance (23 CFR 1313.6(e)(3)). To demonstrate compliance in FY 2006 under the proposed rule, the State would provide a copy of its law that provides repeat offenders with mandatory assessments and treatment as determined appropriate. The State would also include a copy of its tracking system for monitoring treatment of repeat offenders and a list of the educational opportunities provided to court professionals concerning treatment. Alternatively, the State could provide evidence that an officially sanctioned DWI court is operating somewhere in the State.

To demonstrate compliance in a subsequent year under the proposed rule, the State need only submit information that documents changes to either the law or the program previously determined compliant. If there are no changes, the State need only submit a certification stating that there have been no changes since the State's previous year's submission. To demonstrate compliance in FY 2007 under the DWI court provision, the State would provide evidence that two State sanctioned DWI courts are operating somewhere in the State. The State would provide evidence in FY 2008 that it has three State sanctioned DWI courts and in FY 2009 and subsequent fiscal years that it has four State sanctioned DWI courts.

vi. Underage Drinking Prevention Program

An underage drinking (or minimum drinking age) prevention program has been a grant criterion under Section 410 since the program's inception, first as a supplemental grant criterion and later as a criterion for a basic grant. SAFETEA–LU continues to include this grant criterion in section 410, but in a slightly modified form.

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

> An effective strategy, as determined by the Secretary, for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages and for preventing persons from making alcoholic beverages available to individuals under age 21. Such a strategy may include—
>
> (A) The issuance of tamper-resistant drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals age 21 or older; and
>
> (B) A program provided by a nonprofit organization for training point of sale personnel concerning, at a minimum—
>
> (i) The clinical effects of alcohol;
>
> (ii) Methods of preventing second party sales of alcohol;
>
> (iii) Recognizing signs of intoxication;
>
> (iv) Methods to prevent underage drinking; and
>
> (v) Federal, State, and local laws that are relevant to such personnel; and
>
> (C) Having a law in effect that creates a 0.02 percent blood alcohol content limit for drivers under 21 years old.

Agency's Proposal (23 CFR 1313.6(f)). Under the agency's proposal, an effective strategy must not only prevent drivers under the age of 21 from obtaining alcoholic beverages, it must also take steps that prevent persons of any age from making alcoholic beverages available to those who are under 21. The system must target underage drinkers and providers. SAFETEA–LU identifies three components that may be part of a State's effective strategy, and the agency proposes that States must meet each of them to qualify for a grant based on this criterion.

First, States would be required to demonstrate that drivers' licenses issued to individuals under the age of 21 are both tamper-resistant and distinguishable from those issued to individuals 21 years of age or older. The Appendix to the proposed regulation contains a list of security features that States may include on their driver's licenses to make them tamper-resistant. The agency urges States to incorporate as many of the security features as possible into their drivers' licenses to prevent underage drivers from altering existing licenses or obtaining or producing counterfeits. Drivers' licenses that comply with the requirements of the Real ID Act (Pub. L. 109–13) and its implementing regulations would satisfy the proposed requirements for tamper-resistance.

Second, States would be required to demonstrate that they have a program, provided by a nonprofit or public organization that provides training for point-of-sale personnel and procedures in place to ensure program attendance. At a minimum, the training would need to cover the clinical effects of alcohol, methods of preventing second party sales of alcohol, recognizing signs of intoxication, methods to prevent underage drinking, and relevant laws that apply to such personnel.

Third, States would be required to have in effect a zero tolerance law that makes it illegal for persons under the age of 21 to drive with any measurable amount of alcohol in their system, which must be set by the State to be no greater than 0.02 percent BAC. Under 23 U.S.C. 161, States without zero tolerance laws are subject to a penalty withholding of 10 percent of highway funds provided under 23 U.S.C. 104(b). Currently, all 50 States have enacted conforming zero tolerance laws. Puerto Rico and the territories do not have conforming laws.

In addition to the elements identified by SAFETEA–LU, the proposed rule would include two elements based on research findings in a report of the National Research Council Institute of Medicine (IOM) of the National Academy of Science, *Reducing Underage Drinking: A Collective Responsibility*. The State would be required to plan to conduct a highly visible enforcement program that focuses on access to alcohol by persons under age 21. Enforcement strategies under the program could include compliance checks, party dispersal efforts, keg registration and law enforcement focused on zero tolerance laws. The focus of the enforcement

program would be to create general deterrence among those under the age of 21 and those who provide alcohol to them. In addition, the State would be required to develop a communications strategy to support the enforcement effort. The strategy must be designed to reach citizens under the age of 21, their parents and other adults who can impact underage drinkers' access to alcohol. The strategy must publicize the enforcement program and enhance general deterrence by focusing on the State's laws, including the consequences and liability for those under 21 who drink, or drink and drive, and adults who provide alcohol to underage drinkers. In addition, the strategy must include a peer education component. When developing a strategy, States may wish to consider use of evidence-based youth-oriented interventions and effective programs that have been determined to be promising model programs under the National Registry of Effective Programs and Practices (NREPP).

All aspects of the effective system proposed under this criterion must be capable of implementation at a local level. The agency believes that this is an important concept to ensure the effectiveness of an underage drinking prevention program.

Basis for Proposal. Drinking by drivers under 21 years of age continues to be a significant safety problem. Studies have shown that when States adopted a minimum drinking age of 21 years, they experienced an average 12 percent decrease in alcohol-related fatalities in the affected age group. Many States, however, do not enforce minimum drinking age laws as vigorously as possible.

Over the last two years there has been increased national interest and emphasis on underage drinking, primarily as a result of the IOM report, *Reducing Underage Drinking: A Collective Responsibility*. The report highlights the problem of underage drinking as endemic, underscoring that the problem will not be reduced in the absence of significant new interventions. The IOM report identifies key strategies based on research undertaken at the National Institute on Alcohol Abuse and Alcoholism of the National Institutes of Health, and evidence-based programs determined to be effective such as those meeting the standards of the Substance Abuse and Mental Health Services Administration's NREPP.

Demonstrating Compliance (23 CFR 1313.6(f)(3)). To demonstrate compliance in the first fiscal year that a State receives a grant based on this criterion under the proposed rule, the State would be required to submit sample drivers' licenses demonstrating that licenses issued to drivers under the age of 21 are easily distinguishable from licenses issued to older drivers and that they are tamper-resistant. The State would have to show that it provides point-of-sale personnel with training that covers the stated minimum requirements and includes procedures that ensure program attendance. A copy of the State's zero tolerance law that complies with 23 U.S.C. 161 would be provided. In addition, States would be required to submit a plan that provides for highly visible enforcement focused on alcohol access by those under 21. The plan would provide information on the types of enforcement strategies to be used. A communication strategy with a peer education component that supports the enforcement plan also would be required to be provided.

To demonstrate compliance in subsequent fiscal years, States need only submit information documenting any changes to the State's drivers' licenses or any other part of the State's underage driving prevention program, or a certification stating there have been no changes since the State's previous year's submission.

vii. Administrative License Suspension or Revocation System

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

> An administrative driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol that requires that—
>
> (A) In the case of an individual who, in any 5-year period beginning after the date of enactment of the Transportation Equity Act for the 21st Century, is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or is determined to have refused to submit to such a test as proposed by a law enforcement officer, the State agency responsible for administering drivers' licenses, upon receipt of the report of the law enforcement officer—
>
> (i) Suspend the driver's license of such individual for a period of not less than 90 days if such individual is a first offender in such 5-year period; except that under such suspension an individual may operate a motor vehicle, after the 15-day period beginning on the date of the suspension, to and from employment, school, or an alcohol treatment program if an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual; and
>
> (ii) Suspend the driver's license of such individual for a period of not less than 1 year, or revoke such license, if such individual is a repeat offender in such 5-year period; except that such individual [may be allowed] to operate a motor vehicle, after the 45-day period beginning on the date of the suspension or revocation, to and from employment, school, or an alcohol treatment program if an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual; and
>
> (B) The suspension and revocation referred to under clause (i) take effect not later than 30 days after the date on which the individual refused to submit to a chemical test or received notice of having been determined to be driving under the influence of alcohol, in accordance with the procedures of the State.

Agency's Proposal (23 CFR 1313.6(g)). To satisfy this criterion under the proposed rule, a State would be required to provide that first offenders must be subject to a 90-day suspension, that repeat offenders must be subject to a one-year suspension or revocation, and that suspensions or revocations must take effect within 30 days after the offender refuses to submit to a chemical test or receives notice of having failed the test. The proposed rule would not require, but would permit, a State to provide limited driving privileges after not less than 15 days for first offenders and not less than 45 days for repeat offenders, if an ignition interlock device is installed on all vehicles owned and all vehicles operated by the offender and the offender's driving privileges are restricted to places of employment, school or treatment.

The proposed rule would continue to provide that States may demonstrate compliance with this criterion as either "Law States" or "Data States." A "Law State" would be a State that has a law, regulation or binding policy directive implementing or interpreting the law or regulation that meets each element of the criterion. A "Data State" would be a State that has a law, regulation or binding policy directive that provides for an administrative license suspension or revocation system, but does not meet each element of the criterion. For example, the law may not specifically provide that suspensions must take effect within 30 days. The data provided by the State, however, might demonstrate that the average time to suspend an offender's license is 30 days or less.

Basis for Proposal. Studies show that when States adopt an administrative license suspension or revocation law, they experience a 6 to 9 percent reduction in alcohol-related fatalities.

Prior to the enactment of SAFETEA–LU, this criterion provided longer hard license suspension periods, during which all driving privileges were to be suspended, requiring at least a 30-day

suspension of all driving privileges for a first offender who fails a chemical test, at least a 90-day suspension of all driving privileges for a first offender who refuses to submit to a test and a one-year suspension of all driving privileges for repeat offenders. SAFETEA–LU provides that first offenders (whether they fail or refuse to submit to a test) may operate a vehicle under limited circumstances after a 15-day period if their vehicles are equipped with ignition interlock devices and repeat offenders may do the same after a 45-day period. Research has demonstrated that the installation of ignition interlocks can lead to reductions in drinking and driving recidivism.

Demonstrating Compliance (23 CFR 1313.6(g)(3)–(4)). To demonstrate compliance in the first fiscal year a State qualifies for a grant based on this criterion under the proposed rule, a Law State need only submit a copy of its conforming law, regulation or binding policy directive. A Data State would submit its law, regulation or binding policy directive, and data demonstrating compliance with any element not specifically provided for in the State's law.

To demonstrate compliance with this criterion in subsequent fiscal years under the proposed rule, a Law State need only submit a copy of any changes to the State's law, regulation or binding policy directive. If there are no changes in the State's law, regulation or binding policy directive since the previous year's submission, the State need only submit a certification to that effect. In subsequent fiscal years, Data States would be required to submit the same information as Law States. They would also provide updated data demonstrating compliance with any element not specifically provided for in the State's law.

Although States would not be required to show that law enforcement officers take possession of driver licenses at the time of the stop, the agency encourages States nonetheless to continue this practice. NHTSA has found that the practice of immediately seizing a driver's license is a powerful deterrent.

viii. Self-Sustaining Impaired Driving Prevention Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

A program under which a significant portion of the fines or surcharges collected from individuals who are fined for operating a motor vehicle while under the influence of alcohol are returned to communities for comprehensive programs for the prevention of impaired driving.

Agency's Proposal (23 CFR 1313.6(h)). States used to be able to qualify under this criterion if a significant portion of the fines or surcharges collected from individuals apprehended and fined for operating a motor vehicle while under the influence of alcohol was either returned or an equivalent amount was provided to communities with self-sustaining comprehensive impaired driving prevention programs. Under TEA–21, the approach was amended to make clear that providing an equivalent amount of funds is no longer sufficient. The actual fines or surcharges collected were required to be returned to the collecting communities in order for a State to comply.

The agency's proposal modifies this approach slightly to define a significant portion of the fines or surcharges to mean at least 90 percent of the total amount collected. Compliance with this criterion would require that 90 percent of the total amount collected be returned to communities for comprehensive programs for the prevention of impaired driving. This slight change in approach is intended to alleviate some of the costs States incur in maintaining a Statewide system that returns collected fines and surcharges. For the purpose of operating a self-sustaining program, the agency proposes to allow 10 percent of collected funds to be used for planning and administration costs under this criterion.

The agency recognizes that some States, such as those whose Constitution prohibits such dedicated non-discretionary use of fines and penalties obtained from driving offenders, would not be able to qualify under this criterion. Because a State is required to meet only three of the eight program requirements in the first year (four in the second year and five in subsequent years), a State's inability to comply with this criterion would not necessarily preclude it from obtaining a grant.

Basis for Proposal. Self-sustaining impaired driving prevention programs ensure that resources generated while a State is enforcing its impaired driving laws are returned to the collecting communities in order to confront the problems of impaired driving at a local level. A self-sustaining program provides for fines, reinstatement fees or other charges to be assessed, and for the funds received to be used directly to sustain a comprehensive Statewide impaired driving prevention program. States that have instituted such programs have been very effective in reducing alcohol-related crashes and fatalities.

Demonstrating Compliance (23 CFR 1313.6(h)(3)). To demonstrate compliance with this criterion in the first year under the proposed rule, a State would submit a copy of the law, regulation, or binding policy directive that provides for a self-sustaining impaired driving prevention program and certain Statewide data (or a representative sample) that establishes dedicated use of fine revenues to support community impaired driving prevention programs. The law, regulation or binding policy directive must provide for fines or surcharges to be imposed on individuals apprehended for operating a motor vehicle while under the influence of alcohol and for at least 90 percent of such fines or surcharges collected to be returned to communities with comprehensive impaired driving programs. The agency's proposal defines the elements of such a program. The data must show the aggregate amount of fines or surcharges collected and the amount of revenues returned to communities with comprehensive impaired driving prevention programs under the State's self-sustaining system. In addition, the State would certify that the amount of funds returned to communities to conduct comprehensive impaired driving prevention programs meets the requirements of this criterion.

To demonstrate compliance in subsequent years under the proposed rule, States need only submit updated data and either a copy of any changes to the State's law, regulation or binding policy directive or, if there have been no changes to the State's law, regulation or binding policy directive, a certification statement to that effect.

C. High Fatality Rate States (23 CFR 1313.7)

SAFETEA–LU provides a separate grant to the 10 States that have the highest fatality rates, as determined using the most recent FARS data. Up to 15 percent of the total amount available for section 410 grants may be used to fund these separate grants.

As directed by SAFETEA–LU, the agency will calculate the alcohol fatality rate per 100 million VMT for each State using the most recent final FARS data available prior to the date of the grant. Any State that is determined to have one of the ten highest fatality rates will be eligible for the separate grant under section 410. States for which no reportable FARS data exist will not be evaluated for qualification as a high fatality rate State.

A qualifying high fatality rate State would be required to submit a plan that details expenditures for the funding provided. Expenditures are limited to the eight programs outlined in the programmatic grant criteria and other allowable costs provided for in the statute (see Section IV.A, Qualification and Post-Approval Requirements, for discussion of all allowable costs). At least 50 percent of the funds must be used to support a high visibility impaired driving enforcement campaign as detailed in Section III.B(i) and the State would be required to describe its plans for use of these funds, including plans for conducting enforcement and communications efforts. High fatality rates States are encouraged to use remaining amounts under the grant to implement recommendations made to the State by the agency as a result of an Impaired Driving Technical Assessment or Impaired Driving Special Management Review (SMR) conducted within the previous five fiscal years. Funds expended to implement assessment or SMR recommendations must continue to meet the grant expenditure limitations in SAFETEA–LU.

Once the agency has approved the plan, funds will be made available to the State on the basis of the apportionment formula in section 402(c). No qualifying State, however, may be allocated more than 30 percent of the total funds available for this separate grant. These requirements are specified by SAFETEA–LU.

States that qualify as high fatality rate States in subsequent years will be required to submit an updated plan in each year that they qualify. The agency will inform those States that qualify as high fatality rate States of their eligibility for the separate grant as soon as practicable after the most recent final FARS data prior on which the date the grant becomes available (on or about June 1 of that fiscal year).

IV. Administrative Issues

A. Qualification and Post-Approval Requirements (23 CFR 1313.4(a)–(b))

The proposed rule outlines, in the qualification requirements section, 23 CFR 1313.4(a)(2), certain procedural steps to be followed when States wish to apply for a grant under this program and have not qualified as a low fatality rate States. Many of these procedural requirements would continue unchanged from the old section 410 program.

Applications would be required to be submitted to the agency no later than August 1 of the fiscal year in which the States are applying for grant funds. The application would require the submission of a certification that: (1) The State has an alcohol-impaired driving prevention program that meets the grant requirements; (2) it will use funds awarded only for the implementation and enforcement of alcohol-impaired driving prevention programs under section 410; (3) it will administer the funds in accordance with relevant regulations and OMB Circulars and to defray only the costs allowable under 23 U.S.C. 410; and (4) the State will maintain its aggregate expenditures from all other sources for its alcohol-impaired driving prevention programs at or above the average level of such expenditures in fiscal years 2004 and 2005. The proposed rule provides that either the State or Federal fiscal year may be used. The proposed maintenance of effort provision would not require that the State make up for Federal funding that has been reduced. As a result, the agency would not include, for the purpose of calculating an average level of expenditure, program funds that have been discontinued as a result of the enactment of SAFETEA–LU (*e.g.*, grant funds provided under 23 U.S.C. 163). The agency also will not include funds that are no longer transferred to 23 U.S.C. 402, because of the State's compliance in the previous two fiscal years with programs for which noncompliance would have resulted in a transfer penalty.

The proposed rule, under 23 CFR 1313.4(a)(1), would provide that States qualifying as low and/or high fatality rate States will not be required to submit an application. These States, however, still would be required to submit certifications to the agency.

Consistent with current procedures in other highway safety grant programs being administered by NHTSA, the agency's proposal at 1313.4(b)(2) provides that once a State has been informed that it will receive a grant, it would be required to include documentation in the Highway Safety Plan prepared under section 402 that indicates how it intends to use the grant funds. The State must also detail program accomplishments in the Annual Report submitted under the regulation implementing section 402. These documenting requirements must continue each fiscal year until all grant funds have been expended. The grant funds may be distributed among any of the eight alcohol-impaired driving prevention programs under section 410 or to defray the following costs specified in SAFETEA–LU:

(1) Labor costs, management costs, and equipment procurement costs for the high visibility, Statewide law enforcement campaigns under subsection (c)(1).

(2) The costs of the training of law enforcement personnel and the procurement of technology and equipment, including video equipment and passive alcohol sensors, to counter directly impaired operation of motor vehicles.

(3) The costs of public awareness, advertising, and educational campaigns that publicize use of sobriety check points or increased law enforcement efforts to counter impaired operation of motor vehicles.

(4) The costs of public awareness, advertising, and educational campaigns that target impaired operation of motor vehicles by persons under 34 years of age.

(5) The costs of the development and implementation of a State impaired operator information system.

(6) The costs of operating programs that result in vehicle forfeiture or impoundment or license plate impoundment.

Following the award of grant funds, the State would be allowed to incur costs only after submission of an electronic HS Form 217 obligating the grant funds to alcohol-impaired driving prevention programs. Under the agency's proposal at § 1313.4(b)(1), the electronic HS Form 217 would need to be provided to the agency within 30 days after the agency's eligibility determination, but in no event later than September 12 of each fiscal year.

B. Funding Requirements and Limitations (23 CFR 1313.4(c))

SAFETEA–LU contains statutory conditions that limit the use and amount of funding a State receives. The agency's proposal, under § 1313.4(c), articulates these statutory conditions without change, as set forth below.

States may qualify for a grant using two alternative methods. Beginning in FY 2006, a State that qualifies for a grant under section 410 is to receive grant funds in accordance with the apportionment formula in section 402(c). The funds available each fiscal year for high fatality rate State grants are statutorily limited to no more than 15 percent of the funding for the entire section 410 program for that fiscal year. These grant funds are to be shared by the ten States that have the highest fatality rates and allocated in accordance with the apportionment formula in section 402(c). However, no State will be eligible to receive more than 30 percent of the total funds made available for these grants.

Under SAFETEA–LU, States continue to be required to match the grant funds they receive. The Federal share may not exceed 75 percent of the cost of the program adopted under section 410 in the first and second fiscal year the State

receives funds and 50 percent in the third and fourth fiscal year the State receives funds.

The agency proposes to continue to accept a "soft" match in the administration of the section 410 program. The State's share may be satisfied by the use of either allowable costs incurred by the State or the value of in-kind contributions applicable to the period to which the matching requirement applies. A State may not use any Federal funds, such as section 402 funds, to satisfy the matching requirements. In addition, a State can use each non-Federal expenditure only once for matching purposes.

The agency proposes to allow a State to use no more than 10 percent of the total funds received under 23 U.S.C. 410 for planning and administration (P&A) costs, to defray the costs of operating the grant program. As with the section 402 program, Federal participation in P&A activities would not be allowed to exceed 50 percent of the total cost of such activities.

C. Award Procedures (23 CFR 1313.8)

The release of the full grant amounts under section 410 is subject to the availability of funding for that fiscal year. If there are expected to be insufficient funds to award full grant amounts to all eligible States in any fiscal year, NHTSA may release less than the full grant amounts upon initial approval of the State's application and documentation, and release the remainder, up to the State's proportionate share of available funds, before the end of that fiscal year. Project approval, and the contractual obligation of the Federal government to provide grant funds, would be limited to the amount of funds released.

V. Comments

The agency finds good cause to limit the period for comment on this notice to 30 days. In order to publish a final rule in time to accommodate an application period of two months for States and a subsequent review period for the agency, this comment period is deemed necessary. The shortened comment period will assist the agency in making sure that grant funds under section 410 are made available to States during the fiscal year.

Interested persons are invited to comment on this notice of proposed rulemaking. It is requested, but not required, that two copies be submitted. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. (*See* 49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

You may submit your comments by one of the following methods:

(1) By mail to: Docket Management Facility, Docket No. NHTSA–05–XXXX, DOT, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;

(2) By hand delivery to: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday;

(3) By fax to the Docket Management Facility at (202) 493–2251; or

(4) By electronic submission: log onto the DMS Web site at *http://dms.dot.gov* and click on "Help and Information" or "Help/Info" to obtain instructions.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agency will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

You may review submitted comments in person at the Docket Management Facility located at Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday.

You may also review submitted comments on the Internet by taking the following steps:

(1) Go to the DMS web page at *http://dms.dot.gov/search/.*

(2) On that page, click on "search".

(3) On the next page (*http://dms.dot.gov/search/*) type in the four digit docket number shown at the beginning of this notice. Click on "search".

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may also download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

VI. Statutory Basis for This Action

The agency's proposal would implement changes to the grant program under 23 U.S.C. 410 due to amendments made by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU) (Pub. L. 109–59, section 2007).

VII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The agency's proposal has no impact on the total amount of grant funds distributed and thus no impact on the national economy. All grant funds provided under section 410 will be distributed each fiscal year among qualifying States (regardless of the number of States that qualify), using a statutorily-specified formula. The proposal would not alter this approach.

The agency's proposal also does not affect amounts over the significance threshold of $100 million each year. The proposal sets forth application procedures and showings to be made to be eligible for a grant. Under the statute, low fatality rate States will receive grants by direct operation of the statute without the need to formally submit a grant application. The agency estimates that these grants to low fatality rate States will account for more than 35% of the section 410 funding provided annually under SAFETEA–LU. The

funds to be distributed under the application procedures developed in the proposal will therefore be well below the annual threshold of $100 million.

In consideration of the foregoing, the agency has determined that this rulemaking is not economically significant. Accordingly, an economic assessment is not necessary.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rulemaking action will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that an action will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposal under the Regulatory Flexibility Act. States are the recipients of funds awarded under the section 410 program and they are not considered to be small entities under the Regulatory Flexibility Act. Therefore, I certify that this notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999), requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments in the process of developing the proposed regulation. The agency also may not issue a regulation with Federalism implications that preempts a State law without consulting with State and local officials.

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that this proposed rule would not have sufficient Federalism implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. Moreover, the proposed rule would not preempt any State law or regulation or affect the ability of States to discharge traditional State government functions.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), the agency has considered whether this rulemaking would have any retroactive effect. This rulemaking action would not have any retroactive effect. This action 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.

E. Paperwork Reduction Act

The requirements in this rulemaking action that States retain and report information to the Federal government demonstrating compliance with the alcohol-impaired driving prevention grant criteria are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, *et. seq.*) These requirements have been approved under OMB No. 2127–0501 through June 30, 2006. Although SAFETEA–LU revises the structure of the grant program under section 410, the revision does not result in an increase in the amount of information States must provide to demonstrate compliance with the criteria.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with a base year of 1995 (about $118 million in 2004 dollars)). This proposed rule does not meet the definition of a Federal mandate, because the resulting annual State expenditures will not exceed the $100 million threshold. The program is voluntary and States that choose to apply and qualify will receive grant funds.

G. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that this proposal will not have a significant impact on the quality of the human environment.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

The agency has analyzed this proposed rule under Executive Order 13175, and has determined that the proposed action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

I. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

J. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete

Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

List of Subjects in 23 CFR Part 1313

Alcohol abuse, Drug abuse, Grant programs-transportation, Highway safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the agency proposes to revise Part 1313 of title 23 of the Code of Federal Regulations as follows:

PART 1313—INCENTIVE GRANT CRITERIA FOR ALCOHOL-IMPAIRED DRIVING PREVENTION PROGRAMS

1. The headings for Part 1313 would be revised to read as set forth above.

2. The citation of authority for part 1313 would continue to read as follows:

Authority: 23 U.S.C. § 410; delegation of authority at 49 CFR 1.50.

3. Section 1313.3 would be amended by removing paragraphs (c) and (g), redesignating paragraphs (d) through (f) as paragraphs (c) through (e) and adding new paragraphs (f) and (g) to read as follows:

§ 1313.3 Definitions.

* * * * *

(f) *Other associated costs permitted by statute* means labor costs, management costs, and equipment procurement costs for the high visibility enforcement campaigns under § 1313.6(a); the costs of training law enforcement personnel and procuring technology and equipment, including video equipment and passive alcohol sensors, to counter directly impaired operation of motor vehicles; the costs of public awareness, advertising, and educational campaigns that publicize use of sobriety check points or increased law enforcement efforts to counter impaired operation of motor vehicles or that target impaired operation of motor vehicles by persons under 34 years of age; the costs of the development and implementation of a State impaired operator information system; and the costs of operating programs that result in vehicle forfeiture or impoundment or license plate impoundment.

(g) *State* means any one of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

4. Sections 1313.4 through 1313.8 would be revised to read as follows:

§ 1313.4 General requirements.

(a) *Qualification requirements.* To qualify for a grant under 23 U.S.C. 410, a State must, for each fiscal year it seeks to qualify:

(1) Meet the requirements of § 1313.5 or § 1313.7 concerning alcohol-related fatalities, as determined by the agency, and submit written certifications signed by the Governor's Representative for Highway Safety that it will—

(i) Use the funds awarded under 23 U.S.C. 410 only for the implementation and enforcement of alcohol-impaired driving prevention programs in § 1313.6 and other associated costs permitted by statute;

(ii) Administer the funds in accordance with 49 CFR Part 18 and OMB Circular A–87; and

(iii) Maintain its aggregate expenditures from all other sources for its alcohol-impaired driving prevention programs at or above the average level of such expenditures in fiscal years 2004 and 2005 (either State or Federal fiscal year 2004 and 2005 can be used); or

(2) By August 1, submit an application to the appropriate NHTSA Regional Office identifying the criteria that it meets under § 1313.6 and including the certifications in paragraph (a)(1)(i) through (a)(1)(iii) of this section and the additional certification that it has an alcohol-impaired driving prevention program that meets the requirements of 23 U.S.C. 410 and 23 CFR Part 1313.

(b) *Post-approval requirements.* (1) Within 30 days after notification of award, in no event later than September 12 of each year, a State must submit electronically to the agency a Program Cost Summary (HS Form 217) obligating the funds to the Section 410 program; and

(2) Until all Section 410 grant funds are expended, the State must document how it intends to use the funds in the Highway Safety Plan it submits pursuant to 23 U.S.C. § 402 (or in an amendment to that plan) and detail the program activities accomplished in the Annual Report it submits for its highway safety program pursuant to 23 CFR § 1200.33.

(c) *Funding requirements and limitations.* A State may receive grants, beginning in FY 2006, in accordance with the apportionment formula under 23 U.S.C. 402 and subject to the following limitations:

(1) The amount available for grants under § 1313.5 or § 1313.6 shall be determined based on the total number of eligible States for these grants and after deduction of the amount necessary to fund grants under § 1313.7.

(2) The amount available for grants under § 1313.7 shall not exceed fifteen percent of the total amount made available to States under 23 U.S.C. 410 for the fiscal year.

(3) In the first or second fiscal years a State receives a grant under this Part, it shall be reimbursed for up to 75 percent of the cost of its alcohol-impaired driving prevention program adopted pursuant to 23 U.S.C. 410.

(4) In the third and fourth fiscal years a State receives a grant under this Part, it shall be reimbursed for up to 50 percent of the cost of its alcohol-impaired driving prevention program adopted pursuant to 23 U.S.C. 410.

§ 1313.5 Requirements for a low fatality rate state.

To qualify for a grant as a low fatality rate State, the State shall have an alcohol related fatality rate of 0.5 or less per 100,000,000 vehicle miles traveled (VMT) as of the date of the grant, as determined by NHTSA using the most recently available final FARS data. The agency plans to make this information available to States by June 1 of each fiscal year.

§ 1313.6 Requirements for a programmatic state.

To qualify for a grant as a programmatic State, a State must adopt and demonstrate compliance with at least three of the following criteria in FY 2006, at least four of the following criteria in FY 2007, and at least five of the following criteria in FY 2008 and FY 2009.

(a) *High Visibility Enforcement Campaign*—(1) *Criterion.* A high visibility impaired driving law enforcement program that includes:

(i) State participation in National impaired driving law enforcement campaigns organized by NHTSA;

(ii) Additional high visibility law enforcement campaigns within the State conducted on a monthly basis at high-risk times throughout the year; and

(iii) Use of sobriety checkpoints and/or saturation patrols at high-risk locations throughout the State, conducted in a highly visible manner and supported by publicity.

(2) *Definitions*—(i) *Sobriety checkpoint* means a law enforcement activity during which law enforcement officials stop motor vehicles on a non-discriminatory, lawful basis for the purpose of determining whether or not the operators of such motor vehicles are driving while impaired by alcohol and/or other drugs.

(ii) *Saturation patrol* means a law enforcement activity during which enhanced levels of law enforcement are conducted in a concentrated geographic area (or areas) for the purpose of detecting drivers operating motor

vehicles while impaired by alcohol and/or other drugs.

(3) *Demonstrating compliance.* (i) To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, the State shall submit a comprehensive plan for conducting a high visibility impaired driving law enforcement program under which:

(A) State Police and local law enforcement agencies collectively serving at least 50 percent of the State's population or serving geographic subdivisions that account for at least 50 percent of the State's alcohol-related fatalities will participate in the State's high visibility impaired driving law enforcement program;

(B) Each participating law enforcement agency will conduct checkpoints and/or saturation patrols on at least four nights during the national impaired driving campaign organized by NHTSA and will conduct checkpoints and/or saturation patrols at least once per month throughout the remainder of the year;

(C) The State will coordinate law enforcement activities throughout the State to maximize the frequency and visibility of law enforcement activities at high-risk locations Statewide; and

(D) Paid and/or earned media will publicize law enforcement activities before, during and after they take place, both during the national campaign and on a sustained basis at high risk times throughout the year.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit information documenting that the prior year's plan was effectively implemented and an updated plan for conducting a current high visibility impaired driving law enforcement program containing the elements specified in paragraphs (a)(3)(i) and (a)(3)(iii) of this section, except that the level of law enforcement agency participation must reach at least 55 percent of the state population in the second year the State receives a grant based on this criterion, 60 percent in the third year and 65 percent in the fourth year.

(iii) For the purposes of paragraph (a) of this section, a comprehensive plan shall include:

(A) Guidelines, policies or procedures governing the Statewide enforcement program;

(B) Approximate dates and locations of planned law enforcement activities;

(C) A list of law enforcement agencies expected to participate; and

(D) A paid media buy plan, if the State buys media, and a description of anticipated earned media activities before, during and after planned enforcement efforts;

(b) *Prosecution and Adjudication Outreach Program*—(1) *Criterion.* A prosecution and adjudication program that provides for either:

(i) A statewide outreach effort that reduces the use of diversion programs through education of prosecutors and court professionals; or

(ii) A statewide outreach effort that provides information to prosecutors and court professionals on innovative approaches to the prosecution and adjudication of impaired driving cases; or

(iii) A Statewide tracking system that monitors the adjudication of impaired driving cases that—

(A) Covers a majority of the judicial jurisdictions in the State; and

(B) Collects data on original criminal and traffic-related charge(s) against a defendant, the final charge(s) brought by a prosecutor, and the disposition of the charge(s) or sentence provided.

(2) *Definitions*—(i) *Diversion Program* means a program under which an offender is allowed to obtain a reduction or dismissal of an impaired driving charge or removal of an impaired driving offense from a driving record based on participation in an educational course or community service activity.

(ii) *Traffic Safety Resource Prosecutor* (TSRP) means an individual used by the State to provide support in the form of education and outreach programs and technical assistance to enhance the capability of prosecutors to effectively prosecute across the State traffic safety violations.

(iii) *State Judicial Educator* means an individual used by the State to enhance the performance of a State's judicial system by providing education and outreach programs and technical assistance to continuously improve personal and professional competence of all persons performing judicial branch functions.

(3) *Demonstrating compliance.* (i) To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, the State shall submit:

(A) Course materials for Statewide outreach efforts that cover either reducing the use of diversion programs or alternative approaches to sanctioning DWI offenders and a certification that its program is provided on an annual basis using NHTSA-approved materials; or

(B) Information indicating its use of a State sanctioned Traffic Safety Resource Prosecutor and State Judicial Educator; or

(C) The names and locations of the judicial jurisdictions covered by a Statewide tracking system and the type of information collected.

(ii) To demonstrate compliance in a subsequent fiscal year for an outreach and education program, the State must certify that the outreach and education program continues to be conducted on an annual basis using agency-approved materials and provide information on the course content if it has been altered from the previous year.

(iii) To demonstrate compliance in a subsequent fiscal year for use of a TSRP and State Judicial Educator, the State certify the continued existence of these positions and provide updated information if there has been a change in the status of these positions.

(iv) To demonstrate compliance in a subsequent fiscal year for use of a Statewide tracking system that monitors the adjudication of impaired driving cases, the State must provide the information collected from the previous year and an updated list of the courts involved and updated general data collection information if there has been a change from the previous year.

(c) *BAC Testing Program*—(1) *Criterion.* In FY 2006 and each subsequent fiscal year, an effective system for increasing the percentage of BAC testing among drivers involved in fatal motor vehicle crashes, under which the State's percentage of BAC testing among drivers involved in fatal motor vehicle crashes is greater than the previous year by at least 5 percentage points, for State testing rates up to 50 percent, or greater than the previous year by at least 5 percent of the State's percentage of untested drivers, for State testing rates above 50 percent. The most recently available final FARS data as of the date of the grant will be used to determine a State's BAC testing rate.

(2) *Definition. Drivers involved in fatal motor vehicle crashes* includes both drivers who are fatally injured in motor vehicle crashes and drivers who survive a motor vehicle crash in which someone else is killed.

(3) *Demonstrating compliance.* To demonstrate compliance based on this criterion, the State shall submit a statement certifying that the percentage of BAC testing among drivers involved in fatal motor vehicle crashes in the State is greater than the previous year, as determined under § 1313.6(c)(1), using the most recently available final FARS data as of the date of the grant.

(d) *High Risk Drivers Program*—(1) *Criterion.* A law that establishes stronger sanctions or additional penalties for individuals convicted of operating a motor vehicle with a high BAC that requires, in the case of an individual who, in any five-year period beginning

after June 9, 1998, is convicted of operating a motor vehicle with a BAC of 0.15 or more—

(i) A suspension of all driving privileges for a period of not less than one year, or not less than 45 days followed immediately by a period of not less than 320 days of a restricted, provisional or conditional license, if an ignition interlock device is installed on every motor vehicle owned and every motor vehicle operated by the individual. A restricted, provisional or conditional license may be issued only to permit the offender to operate a motor vehicle to and from employment, school or an alcohol treatment program; and

(ii) A mandatory assessment by a certified substance abuse official, with possible referral to counseling if determined appropriate.

(2) *Demonstrating Compliance.* (i) To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, the State shall submit a copy of the law that provides for each element of this criterion.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit a copy of any changes to the State's law or, if there have been no changes, the State shall submit a statement certifying that there have been no changes in the State's law.

(e) *Alcohol Rehabilitation or DWI Court Program*—(1) *Criterion.* A treatment program for repeat or high-risk offenders in a State that provides for either:

(i) An effective inpatient and outpatient alcohol rehabilitation system for repeat offenders, under which—

(A) A State enacts and enforces a law that provides for mandatory assessment of a repeat offender by a certified substance abuse official and requires referral to appropriate treatment as determined by the assessment;

(B) A State monitors the treatment progress of repeat offenders through a Statewide tracking system; and

(C) Educational opportunities are provided by the State for court professionals regarding treatment approaches and sanctioning techniques; or

(ii) A DWI Court program, under which a State refers impaired driving cases involving high-risk offenders to a State-sanctioned DWI Court for adjudication.

(2) Definitions. (i) *DWI Court* means a court that specializes in driving while impaired cases and abides by the Ten Guiding Principles of DWI Courts in effect on the date of the grant, as established by the National Association of Drug Court Professionals.

(ii) *High-risk offender* means a person who meets the definition of a repeat offender, or has been convicted of driving while intoxicated or driving under the influence with a BAC level of 0.15 or greater.

(iii) *Repeat offender* means a person who has been convicted of driving while intoxicated or driving under the influence of alcohol more than once in any five-year period.

(3) *Demonstrating Compliance.* (i) To demonstrate compliance with this requirement in the FY 2006, the State shall submit:

(A) A copy of its law that provides for mandatory assessment and referral to treatment, a copy of its tracking system for monitoring the treatment of repeat offenders, and a list of the educational opportunities provided to court professionals; or

(B) A certification that one State-sanctioned DWI court is operating in the State, which includes the name and location of the court.

(ii) To demonstrate compliance in subsequent fiscal years in which a State receives a grant based on this criterion, the State shall submit:

(A) Information concerning any changes to the alcohol rehabilitation program that was previously approved by the agency, or if there have been no changes, a statement certifying that there have been no changes to the materials previously submitted; or

(B) In FY 2007, a certification that at least two State-sanctioned DWI courts are operating in the State, which includes the names and locations of the courts. In FY 2008, a certification that at least three State-sanctioned DWI courts are operating in the State, which includes the names and locations of the courts. In FY 2009, a certification that at least four State-sanctioned DWI courts are operating in the State, which includes the names and locations of the courts.

(f) *Underage Drinking Prevention Program*—(1) *Criterion.* An effective underage drinking prevention program designed to prevent persons under the age of 21 from obtaining alcoholic beverages and to prevent persons of any age from making alcoholic beverages available to persons under the age of 21, that provides for:

(i) The issuance of a tamper resistant driver's license to persons under age 21 that is easily distinguishable in appearance from a driver's license issued to persons 21 years of age and older;

(ii) A program, conducted by a nonprofit or public organization that provides training to alcoholic beverage retailers and servers concerning the clinical effects of alcohol, methods of preventing second-party sales of alcohol, recognizing signs of intoxication, methods to prevent underage drinking, and relevant laws that apply to retailers and servers and that provides procedures to ensure program attendance by appropriate personnel;

(iii) A law that creates a blood alcohol content limit of no greater than 0.02 percent for drivers under age 21;

(iv) A plan that focuses on underage drivers' access to alcohol by those under age 21 and the enforcement of applicable State law; and

(v) A strategy for communication to support enforcement designed to reach those under age 21 and their parents or other adults and that includes a media campaign and a peer education component.

(2) *Definition. Tamper resistant driver's license* means a driver's license that has one or more of the security features listed in the Appendix.

(3) *Demonstrating Compliance.* (i) To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, the State shall submit sample drivers' licenses issued to persons both under and over 21 years of age that demonstrate the distinctive appearance of licenses for drivers under age 21 and the tamper resistance of these licenses. States shall also submit a plan describing a program for educating point of sale personnel that covers each element of § 1313.6(f)(1)(ii). States shall submit a copy of their zero tolerance law that complies with 23 U.S.C. 161. In addition, States shall submit a plan that provides for an enforcement program and communications strategy meeting § 1313.6(f)(1)(iv) and (v).

(ii) To demonstrate compliance in subsequent fiscal years, States need only submit information documenting any changes to the State's driver's licenses or underage driving prevention program, or a certification stating there have been no changes since the State's previous year submission.

(g) *Administrative License Suspension or Revocation System*—(1) *Criterion.* An administrative driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol that requires that:

(i) In the case of an individual who, in any five-year period beginning after June 9, 1998, is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or is determined to have refused to submit to such a test as proposed by a law enforcement officer,

the State entity responsible for administering driver's licenses, upon receipt of the report of the law enforcement officer, shall—

(A) For a first offender, suspend all driving privileges for a period of not less than 90 days, or not less than 15 days followed immediately by a period of not less than 75 days of a restricted, provisional or conditional license, if an ignition interlock device is installed on every motor vehicle owned and every motor vehicle operated by the individual. A restricted, provisional or conditional license may be issued only to permit the offender to operate a motor vehicle to and from employment, school or an alcohol treatment program; and

(B) For a repeat offender, suspend or revoke all driving privileges for a period of not less than one year, or not less than 45 days followed immediately by a period of not less than 320 days of a restricted, provisional or conditional license, if an ignition interlock device is installed on every motor vehicle owned and every motor vehicle operated by the individual. A restricted, provisional or conditional license may be issued only to permit the offender to operate a motor vehicle to and from employment, school or an alcohol treatment program; and

(ii) The suspension or revocation shall take effect not later than 30 days after the day on which the individual refused to submit to a chemical test or received notice of having been determined to be operating a motor vehicle while under the influence of alcohol, in accordance with the procedures of the State.

(2) *Definitions.* (i) *First offender* means an individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and who is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or who refused to submit to such a test, once in any five-year period beginning after June 9, 1998.

(ii) *Repeat offender* means an individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and who is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or who refused to submit to such a test, more than once in any five-year period beginning after June 9, 1998.

(3) *Demonstrating compliance for Law States.* (i) To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation that provides for each element of this criterion.

(ii) To demonstrate compliance in subsequent fiscal years, a Law State shall submit a copy of any changes to the State's law, regulation or binding policy directive or, if there have been no changes, a statement certifying that there have been no changes to the State's laws, regulations or binding policy directives.

(iii) For purposes of paragraph (g), *Law State* means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation that provides for each element of this criterion.

(4) *Demonstrating compliance for Data States.* (i) To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation that provides for an administrative license suspension or revocation system, and data showing that the State substantially complies with each element of this criterion not specifically provided for in the State's law, regulation or binding policy directive.

(ii) To demonstrate compliance in subsequent fiscal years, a Data State shall submit, in addition to the information identified in paragraph (g)(3)(ii) of this section, data showing that the State substantially complies with each element of this criterion not specifically provided for in the State's law, regulation or binding policy directive.

(iii) The State can provide the necessary data based on a representative sample, on the average number of days it took to suspend or revoke a driver's license and on the average lengths of suspension or revocation periods, except that data on the average lengths of suspension or revocation periods must not include license suspension periods that exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed.

(iv) For the purpose of paragraph (g), Data State means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation that provides for an administrative license suspension or revocation system, but the State's laws, regulations or binding policy directives do not specifically provide for each element of this criterion.

(h) *Self-Sustaining Impaired Driving Prevention Program*—(1) *Criterion.* A self-sustaining impaired driving prevention program under which a significant portion of the fines or surcharges collected from individuals who are fined for operating a motor vehicle while under the influence of alcohol are returned to communities for use in a comprehensive impaired driving prevention program.

(2) *Definitions*—(i) *A comprehensive drunk driving prevention program* means a program that includes, at a minimum, the following components:

(A) Regularly conducted, peak-hour traffic enforcement efforts directed at impaired driving;

(B) Prosecution, adjudication and sanctioning resources that are adequate to handle increased levels of arrests for operating a motor vehicle while under the influence of alcohol;

(C) Programs directed at prevention other than enforcement and adjudication activities, such as school, worksite or community education; server training; or treatment programs;

(D) A public information program designed to make the public aware of the problem of impaired driving through paid and earned media and of the State's efforts to address it.

(ii) *Fines or surcharges collected* means fines, penalties, fees or additional assessments collected.

(iii) *Significant portion* means at least 90 percent of the fines or surcharges collected.

(3) *Demonstrating compliance.* (i) To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, a State shall submit:

(A) A copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation that provides—

(*1*) For fines or surcharges to be imposed on individuals apprehended for operating a motor vehicle while under the influence of alcohol; and

(*2*) For such fines or surcharges collected to be returned to communities with comprehensive drunk driving prevention programs; and

(B) Statewide data (or a representative sample) showing—

(*1*) The aggregate amount of fines or surcharges collected;

(*2*) The aggregate amount of revenues returned to communities with Comprehensive drunk driving prevention programs under the State's self-sustaining system; and

(*3*) The aggregate cost of the State's comprehensive drunk driving prevention programs.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit, in addition to the data identified in paragraph (h)(3)(i)(B) of this section, a copy of any changes to

the State's law, regulation or binding policy directive or, if there have been no changes, a statement certifying that there have been no changes in the State's laws, regulations or binding policy directives.

§ 1313.7 Requirements for a high fatality rate state.

(a) *Qualification.* To qualify for a grant as a high fatality rate State, the State shall be among the ten States that have the highest alcohol-related fatality rates, as determined by the agency using the most recently available final FARS data as of the date of the grant. The agency plans to make this information available to States by June 1 of each fiscal year.

(b) *Demonstrating Compliance.* To demonstrate compliance in each fiscal year a State qualifies as a high fatality rate State, the State shall submit a plan for grant expenditures that is approved by the agency and that expends funds in accordance with § 1313.4. The plan must allocate at least 50 percent of the funds to conduct a high visibility impaired driving enforcement campaign in accordance with § 1313.6(a) and include information that satisfies the planning requirements of § 1313.6(a)(3)(iii).

§ 1313.8 Award procedures.

In each Federal fiscal year, grants will be made to eligible States upon submission and approval of the information required by § 1313.4(a) and subject to the requirements of § 1313.4(b) and (c). The release of grant funds under this part shall be subject to the availability of funding for that fiscal year.

5. Revise the Appendix to part 1313 to read as follows:

Appendix to Part 1313—Tamper Resistant Driver's License

A tamper resistant driver's license or permit is a driver's license or permit that has one or more of the following security features:

(1) Ghost image.
(2) Ghost graphic.
(3) Hologram.
(4) Optical variable device.
(5) Microline printing.
(6) State seal or a signature which overlaps the individual's photograph or information.
(7) Security laminate.
(8) Background containing color, pattern, line or design.
(9) Rainbow printing.
(10) Guilloche pattern or design.
(11) Opacity mark.
(12) Out of gamut colors (*i.e.*, pastel print)
(13) Optical variable ultra-high-resolution lines.
(14) Block graphics.
(15) Security fonts and graphics with known hidden flaws.
(16) Card stock, layer with colors.
(17) Micro-graphics.
(18) Retroreflective security logos.
(19) Machine readable technologies such as magnetic strips, a 1D bar code or a 2D bar code.

Issued on: December 22, 2005.

Brian M. McLaughlin,

Senior Associate Administrator for Traffic Injury Control.

[FR Doc. 05–24623 Filed 12–30–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–148568–04]

RIN 1545–BD93

Time for Filing Employment Tax Returns and Modifications to the Deposit Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations, notice of proposed rulemaking, and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the annual filing of Federal employment tax returns and requirements for employment tax deposits for employers in the Employers' Annual Federal Tax Program (Form 944) (hereinafter referred to as the Form 944 Program). Those temporary regulations provide requirements for filing returns to report the Federal Insurance Contributions Act (FICA) taxes and income tax withheld under section 6011 of the Internal Revenue Code (Code) and §§ 31.6011(a)–1 and 31.6011(a)–4. Those regulations also require employers qualified for the Form 944 Program to file Federal employment tax returns annually. In addition, those regulations provide requirements for employers to make deposits of tax under FICA and the income tax withholding provisions of the Code (collectively, employment taxes) under section 6302 of the Code and § 31.6302–1. The text of those regulations serves, in part, as the text of these proposed regulations. In addition to rules related to the Form 944 Program, these proposed regulations provide an additional method for quarterly return filers to determine whether the amount of accumulated employment taxes is considered *de minimis*. This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by April 3, 2006. Outlines of topics to be discussed at the public hearing scheduled for April 26, 2006 at 10 a.m. must be received by April 5, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–148568–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–148568–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–148568–04). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations relating to section 6011, Raymond Bailey, (202) 622–4910; concerning the proposed regulations relating to section 6302, Audra M. Dineen, (202) 622–4940; concerning submissions of comments and the hearing, Treena Garrett, (202) 622–7180 (not a toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) under sections 6011 and 6302. These amendments are designed to require employers qualified for the Form 944 Program to file Federal employment tax returns annually and to permit most employers in the Form 944 Program to remit their accumulated employment taxes annually with their return. The text of those temporary regulations also serves, in part, as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. These proposed regulations are one part of the IRS's effort to reduce taxpayer burden by requiring certain employers to file Federal employment tax returns annually rather than quarterly and by permitting certain employers to remit employment taxes annually with their return.

De Minimis Deposit Rule

In addition to establishing the Form 944 Program, these proposed regulations will provide a safe harbor for small employers that have an unexpected increase in their deposit liability for a quarterly return period. The proposed regulations provide an alternate method for determining whether the employer's employment tax obligations are *de minimis*, which is based on its employment taxes due for the prior return period. This special rule applies only to employers filing quarterly tax returns and therefore has no application to the Form 944 Program.

Under the existing regulations, deposits of taxes reported on Form 941, "Employer's Quarterly Federal Tax Return," generally are due monthly or semi-weekly. If an employer fails to make timely deposits of employment taxes, then, absent reasonable cause, the employer will be subject to the penalty for failure to deposit under section 6656. Currently, § 31.6302–1(f)(4) (the *de minimis* deposit rule) provides that, for quarterly and annual return periods, if the aggregate amount of employment taxes for the return period is less than $2,500 and that amount is deposited or remitted with a timely filed return for that return period, the amount will be deemed to have been timely deposited and the employer will not be subject to the penalty for failure to deposit. Thus, currently under the *de minimis* deposit rule, employers remitting their employment taxes with their timely filed quarterly returns will only be deemed to have timely deposited their taxes if the amount of taxes due is less than $2,500 for that quarter. Similarly, under the current *de minimis* deposit rule, employers remitting their employment taxes with their timely filed annual returns will only be deemed to have timely deposited if the amount of taxes due is less than $2,500 for the entire year.

Under the proposed amendments, employers may remit their employment taxes with their timely filed quarterly returns and be deemed to have timely deposited if the amount of the taxes due for the current quarter or for the prior quarter is less than $2,500. This special rule can be illustrated by the following example: an employer has less than $50,000 in employment taxes reported during the lookback period and is therefore a monthly depositor under § 31.6302–1(b)(2). The employer's employment tax liabilities for the first and second quarters of 2004 were $2,450 and $2,400, respectively. In the third quarter of 2004, however, the employer's employment tax liability was $2,550. Under the existing *de minimis* deposit rule, if the employer remits the $2,550 with its third quarter return, the amount is not considered timely deposited for that quarter and, therefore, the employer would be assessed the section 6656 penalty for failure to deposit. Modifying the *de minimis* deposit rule to allow employers to base the determination on the employment taxes due for the immediately preceding quarter provides a safe harbor for employers regarding their deposit obligations. Thus, in this example, when the employer had an increase in its employment tax liability for the third quarter of 2004, its remittance would still be deemed to have been timely deposited because the taxes for the immediately preceding return period were *de minimis*. The proposed amendment has no application to the One-Day rule in § 31.6302–1(c)(2), which requires employers to make a deposit on the next banking day if they accumulate $100,000 or more of employment taxes.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. In addition, the IRS and Treasury Department are considering expanding the Form 944 Program in the future and seek comments on the eligibility requirements and how best to change them. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 26, 2006, beginning at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 5, 2006. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Raymond Bailey, Audra M. Dineen, and Emly B. Berndt of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 31.6011(a)–1 is amended by revising paragraph (a)(5) to read as follows:

§ 31.6011(a)–1 Returns under Federal Insurance Contributions Act.

(a) * * *

(5) [The text of proposed § 31.6011(a)–1(a)(5) is the same as the text of § 31.6011(a)–1T(a)(5) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 3. Section 31.6011(a)–4 is amended by revising paragraph (a)(4) to read as follows:

§ 31.6011(a)–4 Returns of income tax withheld.

(a) * * *

(4) [The text of proposed § 31.6011(a)–4(a)(4) is the same as the text of § 31.6011(a)–4T(a)(4) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 4. Section 31.6302–1 is amended by revising paragraphs (b)(4), (c)(5) and 6, (d) *Example 6,* (f)(4), and (f)(5) *Example 3* to read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(b) * * *

(4) * * *

(i) [The text of the proposed § 31.6302–1(b)(4)(i) is the same as the text of § 31.6302–1T(b)(4)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of the proposed § 31.6302–1(b)(4)(ii) is the same as the text of § 31.6302–1T(b)(4)(ii) published elsewhere in this issue of the **Federal Register**].

(c) * * *

(5) [The text of proposed § 31.6302–1(c)(5) is the same as the text of § 31.6302–1T(c)(5) published elsewhere in this issue of the **Federal Register**].

(6) [The text of proposed § 31.6302–1(c)(6 is the same as the text of § 31.6302–1T(c)(6) published elsewhere in this issue of the **Federal Register**].

(d) * * *

Example 6. [The text of proposed § 31.6302–1(d) *Example 6* is the same as the text of § 31.6302–1T(d) *Example 6* published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) * * *

(4) *De minimis rule*—(i) *De minimis deposit rule for quarterly and annual return periods beginning on or after January 1, 2001.* If the total amount of accumulated employment taxes for the return period is *de minimis* and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited. The total amount of accumulated employment taxes is *de minimis* if it is less than $2,500 for the return period or if it is *de minimis* pursuant to paragraph (f)(4)(ii) of this section.

(ii) *De minimis deposit rule for quarterly return periods.* For purposes of paragraph (f)(4)(i) of this section, if the total amount of accumulated employment taxes for the immediately preceding quarter was less than $2,500, unless paragraph (c)(3) of this section applies to require a deposit at the close of the next banking day, then the employer will be deemed to have timely deposited the employer's employment taxes for the current quarter if the employer complies with the time and method of payment requirements contained in paragraph (f)(4)(i) of this section.

(iii) [The text of proposed § 31.6302–1(f)(4)(iii) is the same as the text of § 31.6302–1T(f)(4)(iii) published elsewhere in this issue of the **Federal Register**].

(5) * * *

Example 3. [The text of proposed § 31.6302–1(f)(5) *Example 3* is the same as the text of § 31.6302–1T(f)(5) *Example 3* published elsewhere in this issue of the **Federal Register**]

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–24563 Filed 12–30–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 2005–P–066]

RIN 0651–AB93

Changes To Practice for Continuing Applications, Requests for Continued Examination Practice, and Applications Containing Patentably Indistinct Claims

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rule making.

SUMMARY: Continued examination practice, including the use of both continuing applications and requests for continued examination, permits applicants to obtain further examination and advance an application to final agency action. This practice allow applicants to craft their claims in light of the examiner's evidence and arguments, which in turn may lead to well-designed claims that give the public notice of precisely what the applicant regards as his or her invention. However, each continued examination filing, whether a continuing application or request for continued examination, requires the United States Patent and Trademark Office (Office) to delay taking up a new application and thus contributes to the backlog of unexamined applications before the Office. In addition, current practice allows an applicant to generate an unlimited string of continued examination filings from an initial application. In such a string of continued examination filings, the exchange between examiners and applicants becomes less beneficial and suffers from diminishing returns as each of the second and subsequent continuing applications or requests for continued examination in a series is filed. Moreover, the possible issuance of multiple patents arising from such a process tends to defeat the public notice function of patent claims in the initial application.

The Office is making every effort to become more efficient, to ensure that the patent application process promotes innovation, and to improve the quality of issued patents. With respect to continued examination practice, the Office is proposing to revise the patent rules of practice to better focus the application process. The revised rules would require that second or subsequent continued examination filings, whether a continuation application, a continuation-in-part application, or a request for continued examination, be supported by a showing as to why the amendment, argument, or evidence presented could not have been previously submitted. It is expected that these rules will make the exchange between examiners and applicants more efficient and effective. The revised rules should also improve the quality of issued patents, making them easier to evaluate, enforce, and litigate. Moreover, under the revised rules patents should issue sooner, thus giving the public a clearer understanding of what is patented.

The revised rules would also ease the burden of examining multiple applications that have the same effective filing date, overlapping disclosure, a common inventor, and common assignee by requiring that all patentably indistinct claims in such applications be submitted in a single application.

The changes proposed in this notice will also allow the Office to focus its patent examining resources on new applications instead of multiple continued examination filings that contain amendments or evidence that could have been submitted earlier, and thus allow the Office to reduce the backlog of unexamined applications. This will mean faster and more effective examination for the vast majority of applicants without any additional work on the applicant's part. Additional resources will be devoted to multiple continued examination filings only where necessary.

Comment Deadline Date: To be ensured of consideration, written comments must be received on or before May 3, 2006. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to *AB93Comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Robert W. Bahr. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Office Internet Web site (*address: http://www.uspto.gov*). *Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.*

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr, Senior Patent Attorney, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–8800, by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Robert W. Bahr.

SUPPLEMENTARY INFORMATION: The current volume of continued examination filings—including both continuing applications and requests for continued examination—and duplicative applications that contain "conflicting" or patentably indistinct claims, are having a crippling effect on the Office's ability to examine "new" (*i.e.*, non-continuing) applications. The cumulative effect of these continued examination filings is too often to divert patent examining resources from the examination of new applications to new technology and innovations, to the examination of applications that have already been examined, have issued as patents, or have been abandoned. In addition, when the continued examination process fails to reach a final resolution, and when multiple applications containing claims to patentably indistinct inventions are filed, the public is left uncertain as to what the set of patents resulting from the initial application will cover. Thus, these practices impose a burden on innovation both by retarding the Office's ability to examine new applications and by undermining the function of claims to notify the public as to what technology is or is not available for use.

Commentators have noted that the current unrestricted continuing application and request for continued examination practices preclude the Office from ever finally rejecting an application or even from ever finally allowing an application. *See* Mark A. Lemley and Kimberly A. Moore, *Ending Abuse of Patent Continuations,* 84 B.U. L. Rev. 63, 64 (2004). The burdens imposed by the repetitive filing of applications (as continuing applications) on the Office (as well as on the public) is not a recent predicament. *See To Promote the Progress of Useful Arts, Report of the President's Commission on the Patent System,* at 17–18 (1966) (recommending changes to prevent the repetitive filing of dependent (*i.e.*, continuing) applications). Unrestricted continued examination filings and multiple applications containing patentably indistinct claims, however, are now having such an impact on the Office's ability to examine new applications that it is now appropriate for the Office to clarify the applicant's duty to advance the application to final action by placing some restrictions on the filing of multiple continuing applications, requests for continued examination, and other multiple applications to the same invention. *See* 35 U.S.C. 2(b) (authorizes the Office to establish regulations, not inconsistent with law, which shall govern the conduct of proceedings in the Office, and shall facilitate and expedite the processing of patent applications). This would permit the Office to apply the patent examining resources currently absorbed by these applications to the examination of new applications and thereby reduce the backlog of unexamined applications.

The Office also notes that not every applicant comes to the Office prepared to particularly point out and distinctly claim what the applicant regards as his invention, for example, where the applicant's attorney or agent has not adequately reviewed or revised the application documents (often a literal translation) received from the applicant. In these situations examination of what applicants actually regard as their invention may not begin until after one or more continued examination filings. Applicants should not rely on an unlimited number of continued examination filings to correct deficiencies in the claims and disclosure that applicant or applicant's representative have not adequately reviewed. In addition, a small minority of applicants have misused continued examination practice with multiple continued examination filings in order to simply delay the conclusion of examination. This skirts applicant's duty to make a *bona fide* attempt to advance the application to final agency action and impairs the ability of the Office to examine new and existing applications. It also prejudices the public by permitting applicants to keep applications in pending status while awaiting developments in similar or parallel technology and then later amending the pending application to cover the developments. The courts have permitted the addition of such claims, when supported under 35 U.S.C. 112, ¶ 1, to encompass products or processes discovered in the marketplace. *See PIN/NIP, Inc.,* v. *Platt Chemical Co.,* 304 F.3d 1235, 1247, 64 USPQ2d 1344, 1352 (Fed. Cir. 2002). However, the practice of maintaining continuing applications for the purpose of adding claims after such discoveries is not calculated to advance prosecution before the Office.

The Office, in light of its backlog and anticipated continued increase in applications is making every effort to become more efficient. Achieving greater efficiency requires the cooperation of those who provide the input into the examination process, the applicants and their representatives. With respect to continued examination practice, the Office is proposing to

revise the rules of practice to assure that multiple continued examination filings from a single application do not absorb agency resources unless necessary for effective examination. The revised rules would require that second or subsequent continuation or continuation-in-part applications and second or subsequent requests for continued examination of an application include a showing as to why the amendment, argument, or evidence presented could not have been previously submitted. It is expected that these rules will make the exchange between examiners and applicants more efficient, get claims to issue faster, and improve the quality of issued patents. The revised rules would also ease the burden of examining multiple applications that have the same effective filing date, overlapping disclosure, a common inventor, and common assignee by requiring that all patentably indistinct claims in such applications be submitted in a single application absent good and sufficient reason.

The Office's Patent Application Locating and Monitoring (PALM) records show that, in fiscal year 2005, the Office received approximately 317,000 nonprovisional applications, and that about 62,870 of these nonprovisional applications were continuing applications. In addition, the Office's PALM records show that the Office received about 52,750 requests for continued examination in fiscal year 2005. Thus, about thirty percent (63,000 + 52,000)/(317,000 + 52,000) of the Office's patent examining resources must be applied to examining continued examination filings that require reworking earlier applications instead of examining new applications.

In comparison, the Office issued over 289,000 first Office actions on the merits in fiscal year 2005. Had there been no continued examination filings, the Office could have issued an action for every new application received in 2005 and reduced the backlog by issuing actions in 35,000 older cases. Instead, the Office's backlog grew because of the large number of continued examination filings.

Thus, current continued examination practice and the filing of multiple applications containing patentably indistinct claims are impairing the Office's ability to examine new applications without real certainty that these practices effectively advance prosecution, improve patent quality, or serve the typical applicant or the public. These proposed changes to the rules in title 37 of the Code of Federal Regulations (CFR) are intended to ensure that continued examination filings are used efficiently to move applications forward. The Office expects that the new rules will lead to more focused and efficient examination, improve the quality of issued patents, result in patents that issue faster, and give the public earlier notice of just what patentees claim. The changes to the rules also address the growing practice of filing (by a common applicant or assignee) of multiple applications containing patentably indistinct claims.

Of the roughly 63,000 continuing applications filed in fiscal year 2005, about 44,500 were designated as continuation/continuation-in-part (CIP) applications, and about 18,500 were designated as divisional applications. About 11,800 of the continuation/CIP applications were second or subsequent continuation/CIP applications. Of the over 52,000 requests for continued examination filed in fiscal year 2005, just under 10,000 were second or subsequent requests for continued examination. Thus, the Office's proposed requirements for seeking second and subsequent continuations will not have an effect on the vast majority of patent applications.

35 U.S.C. 111(a) and 120, respectively, permit an applicant to file a nonprovisional application and to claim the benefit of a prior-filed nonprovisional application. Similarly, 35 U.S.C. 363 and 365(c), respectively, permit an applicant to file an international application under Patent Cooperation Treaty (PCT) Article 11 and 35 U.S.C. 363 and, if the international application designates the United States of America, claim the benefit of a prior-filed international application designating the United States of America or a prior-filed nonprovisional application. Similarly again, 35 U.S.C. 111(a) and 365(c) permit an applicant to file a nonprovisional application (filed under 35 U.S.C. 111(a)) and claim the benefit of a prior-filed international application designating the United States of America (under 35 U.S.C. 365(c)).

The practice of filing "continuation applications" arose early in Office practice mainly as a procedural device to effectively permit the applicant to amend an application after rejection and receive an examination of the "amended" (or new) application. *See In re Bogese,* 22 USPQ2d 1821, 1824 (Comm'r Pats. 1991) (*Bogese I*). The concept of a continuation application *per se* was first recognized in *Godfrey* v. *Eames,* 68 U.S. (1 Wall.) 317, 325–26 (1864). *See Bogese I,* 22 USPQ2d at 1824. 35 U.S.C. 120 is a codification of the continuation application practice recognized in *Godfrey* v. *Eames. See id* (citing *In re Hogan,* 559 F.2d 595, 603, 194 USPQ 527, 535 (CCPA 1977)).

Applicants should understand, however, that there is not an unfettered right to file multiple continuing applications without making a *bona fide* attempt to claim the applicant's invention. *See In re Bogese,* 303 F.3d 1362, 64 USPQ2d 1448 (Fed. Cir. 2002) (*Bogese II*). While *Bogese II* was an extreme case, one of prosecution laches, it makes clear that applicants face a general requirement of good faith in prosecution and that the Director has the inherent authority, rooted in 35 U.S.C. 2, to ensure that applicants comply with that duty. *See Bogese II,* 303 F.3d at 1368 n.5, 64 USPQ2d at 1452 n.5.

The proposed rules are not an attempt to codify *Bogese II* or to simply combat such extreme cases of prosecutions laches. Nor do these rules set a *per se* limit on the number of continuing applications. *Compare In re Henriksen,* 399 F.2d 253, 158 USPQ 224 (CCPA 1968). Rather, they require that applicants who file multiple continuing applications from the same initial application show that the third and following applications in the chain are necessary to advance prosecution. In particular, the proposed rules require that any second or subsequent continuing application show to the satisfaction of the Director that the amendment, argument, or evidence could not have been submitted during the prosecution of the initial application or the first continuing application.

The Office is aware of case law which suggests that the Office has no authority to place an absolute limit on the number of copending continuing applications originating from an original application. *See In re Hogan,* 559 F.2d at 603–05, 194 USPQ at 565–66; and *Henriksen,* 399 F.2d at 262, 158 USPQ at 231. The Office does not attempt that here. No limit is placed on the number of continuing applications. Rather applicants are required to show that later-filed applications in a multiple-continuing chain are necessary to claim the invention—and do not contain unnecessarily delayed evidence, arguments, or amendments that could have been presented earlier. In addition, in those earlier cases the Office had not promulgated any rules, let alone given the public adequate notice of, or an opportunity to respond to, the *ad hoc* limits imposed. *See Henriksen,* at 399 F.2d at 261–62, 158 USPQ at 231 (characterizing the action of the Office as akin to a retroactive rule change that had no support in the rules of practice or *Manual of Patent Examining*

Procedure). Furthermore, the Court in *Bogese II* rejected the view that its previous case law (*e.g., Henriksen*) stood for the broad proposition that 35 U.S.C. 120 gave applicants *carte blanche* to prosecute continuing applications in any desired manner. *See Bogese II,* 303 F.3d at 1368 n.5, 64 USPQ2d at 1452 n.5.

35 U.S.C. 132(b) provides for the request for continued examination practice set forth in § 1.114. Unlike continuation application practice, the request for continued examination practice was recently added to title 35, U.S.C., in section 4403 of the American Inventors Protection Act of 1999. *See* Pub. L. 106–113, 113 Stat. 1501, 1501A–560 (1999). 35 U.S.C. 132(b) provides (*inter alia*) that the Office "shall prescribe regulations to provide for the continued examination of applications for patent at the request of the applicant." Nothing in 35 U.S.C. 132(b) or its legislative history suggests that the Office must or even should permit an applicant to file an unlimited number of requests for continued examination in an application. Therefore, the Office is proposing rules that allow applicants to file their first request for continued examination without any justification, but require applicants to justify the need for any further requests for continued examination in light of the past prosecution.

The Office appreciates that appropriate continued examination practice permits an applicant to obtain further examination and advance an application to final action. The current unrestricted continued examination practice, however, does not provide adequate incentives to assure that the exchanges between an applicant and the examiner during the examination process are efficient. The marginal value vis-a-vis the patent examination process as a whole of exchanges between an applicant and the examiner during the examination process tends to decrease after the first continued examination filing. The Office resources absorbed by the examination of a second or subsequent continued examination filing are diverted away from the examination of new applications, thus increasing the backlog of unexamined applications. Therefore, the Office is proposing to require that an applicant filing a second or subsequent continuing application or second or subsequent request for continued examination include a showing as to why the amendment, argument, or evidence could not have been previously submitted.

The Office also appreciates that applicants sometimes use continued examination practice to obtain further examination rather than file an appeal to avoid the delays that historically have been associated with the appeal process. The Office, however, has taken major steps to eliminate such delays. The Board of Patent Appeals and Interferences (BPAI) has radically reduced the inventory of pending appeals from 9,201 at the close of fiscal year 1997 to 882 at the close of fiscal year 2005. The Office has also adopted an appeal conference program to review the rejections in applications in which an appeal brief has been filed to ensure that an appeal will not be forwarded to the BPAI for decision absent the concurrence of experienced examiners. *See Manual of Patent Examining Procedure* section 1208 (8th ed. 2001) (Rev. 3, August 2005) (MPEP). The Office is also in the process of adopting a pre-brief appeal conference program to permit an applicant to request that a panel of examiners review the rejections in his or her application prior to the filing of an appeal brief. *See New Pre-Appeal Brief Conference Program,* 1296 *Off. Gaz. Pat. Office* 67 (July 12, 2005). These programs provide for a relatively expeditious review of rejections in an application under appeal. Thus, for an applicant faced with a rejection that he or she feels is improper from a seemingly stubborn examiner, the appeal process offers a more effective resolution than seeking further examination before the examiner.

Efficient examination also requires that applicants share some of the burden of examination when they file multiple applications containing "conflicting" or patentably indistinct claims. The rules of practice currently provide that "[w]here two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application." *See* current § 1.78(b). The Office is proposing to revise this rule so that, when an applicant (or assignee) files multiple applications with the same effective filing date, a common inventor and overlapping disclosures, the Office will presume that the applications contain patentably indistinct claims. In such a situation, the applicant must either rebut this presumption by explaining to the satisfaction of the Director how the applications contain only patentably distinct claims, or submit the appropriate terminal disclaimers and explain to the satisfaction of the Director why two or more pending applications containing "conflicting" or patentably indistinct claims should be maintained. The effect of this proposed rule will be to share the burden of examining multiple applications, with overlapping disclosure, a common inventor, and the same filing date, for double patenting.

Double patenting exists because a party (or parties to a joint research agreement under the Cooperative Research and Technology Enhancement Act of 2004 (CREATE Act), Public Law 108–453, 118 Stat. 3596 (2004)) has filed multiple patent applications containing patentably indistinct claims. The applicant (or the owner of the application) is in a far better position than the Office to determine whether there are one or more other applications or patents containing patentably indistinct claims. For this reason, where an applicant chooses to file multiple applications that are substantially the same, it will be the applicant's responsibility to assist the Office in resolving potential double patenting situations rather than taking no action until faced with a double patenting rejection.

Finally, the Office has a first action final rejection practice under which the first Office action in a continuing application may be made final under certain circumstances. See MPEP § 706.07(b). If the changes proposed in this notice are adopted, the Office will discontinue this practice as no longer necessary in continuing applications under 35 U.S.C. 120, 121, or 365(c) and in requests for continued examination under 35 U.S.C. 132(b). The Office, however, does not plan any change to the final action practice for the Office action following a submission under § 1.129(a). *See Changes to the Transitional Procedures for Limited Examination After Final Rejection in Certain Applications Filed Before June 8, 1995,* 70 FR 24005 (May 6, 2005), 1295 *Off. Gaz. Pat. Office* 22 (Jun. 7, 2005).

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

Section 1.78: Section 1.78 is proposed to be reorganized as follows: (1) § 1.78(a) contains definitions of continuing application, continuation application, divisional application, and continuation-in-part application; (2) § 1.78(b) contains provisions relating to claims under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application; (3) § 1.78(c) contains provisions relating to delayed claims under 35 U.S.C. 119(e) for the benefit of

a prior-filed provisional application; (4) § 1.78(d) contains provisions relating to claims under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed nonprovisional or international application; (5) § 1.78(e) contains provisions relating to delayed claims under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed nonprovisional or international application; (6) § 1.78(f) contains provisions relating to applications naming at least one inventor in common and containing patentably indistinct claims; (7) § 1.78(g) contains provisions relating to applications or patents under reexamination naming different inventors and containing patentably indistinct claims; and (8) § 1.78(h) contains provisions pertaining to the treatment of parties to a joint research agreement under the CREATE Act.

Proposed 1.78(a)(1) defines a "continuing application" as a nonprovisional application or international application designating the United States of America that claims the benefit under 35 U.S.C. 120, 121, or 365(c) of a prior-filed nonprovisional application or international application designating the United States of America. Proposed 1.78(a)(1) further provides that an application that does not claim the benefit under 35 U.S.C. 120, 121, or 365(c) of a prior-filed application, is not a continuing application even if the application claims the benefit under 35 U.S.C. 119(e) of a provisional application, claims priority under 35 U.S.C. 119(a)–(d) or 365(b) to a foreign application, or claims priority under 35 U.S.C. 365(a) or (b) to an international application designating at least one country other than the United States of America. A continuing application must be one of a continuation application, a divisional application, or a continuation-in-part application. *See* MPEP § 201.11 ("To specify the relationship between the applications, applicant must specify whether the application is a continuation, divisional, or continuation-in-part of the prior application. Note that the terms are exclusive. An application cannot be, for example, both a continuation and a divisional or a continuation and a continuation-in-part of the same application.").

Proposed 1.78(a)(2) defines a "continuation application" as a continuing application as defined in § 1.78(a)(1) that discloses and claims only an invention or inventions that were disclosed in the prior-filed application. *See* MPEP § 201.07 (defines a continuation application as an application that discloses (or discloses and claims) only subject matter that was disclosed in the prior-filed nonprovisional application).

Proposed § 1.78(a)(3) defines a "divisional application" as a continuing application as defined in § 1.78(a)(1) that discloses and claims only an invention or inventions that were disclosed and claimed in the prior-filed application, but were subject to a requirement of unity of invention under PCT Rule 13 or a requirement for restriction under 35 U.S.C. 121 and not elected for examination in the prior-filed application. MPEP § 201.06 defines a divisional application as an application for an independent and distinct invention, which discloses and claims only subject matter that was disclosed in the prior-filed nonprovisional application. Proposed § 1.78(a)(3), however, limits a the definition of "divisional application" to an application that claims only an invention or inventions that were subject to a requirement of unity of invention under PCT Rule 13 or a requirement for restriction under 35 U.S.C. 121 and not elected for examination in the prior-filed application. *See* 35 U.S.C. 121 ("[i]f two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions [and i]f the other invention is made the subject of a divisional application which complies with the requirements of [35 U.S.C.] 120 * * *").

Proposed § 1.78(a)(4) defines a "continuation-in-part application" as a continuing application as defined in § 1.78(a)(1) that discloses subject matter that was not disclosed in the prior-filed application. *See* MPEP § 201.08 (a continuation-in-part repeats some substantial portion or all of the earlier nonprovisional application and adds matter not disclosed in the prior-filed nonprovisional application).

Proposed § 1.78(b) contains provisions relating to claims under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application. 35 U.S.C. 119(e)(1) requires that a provisional application disclose the invention claimed in at least one claim of the later-filed application in the manner provided by 35 U.S.C. 112, ¶ 1, for the later-filed application to actually receive the benefit of the filing date of the provisional application. *See New Railhead Mfg., L.L.C.* v. *Vermeer Mfg. Co.,* 298 F.3d 1290, 1294, 63 USPQ2d 1843, 1846 (Fed. Cir. 2002) (for a nonprovisional application to actually receive the benefit of the filing date of the provisional application, "the specification of the provisional [application] must 'contain a written description of the invention and the manner and process of making and using it, in such full, clear, concise, and exact terms,' 35 U.S.C. 112 ¶ 1, to enable an ordinarily skilled artisan to practice the invention claimed in the nonprovisional application"). Proposed § 1.78(b), however, does not also state (as does current § 1.78(a)(4)) that the provisional application discloses the invention claimed in at least one claim of the later-filed application in the manner provided by 35 U.S.C. 112, ¶ 1, because: (1) It is not necessary for the rules of practice to restate provisions of statute; and (2) the Office does not require or check for such a disclosure as a condition of permitting an application to claim the benefit of the filing date of a provisional application.

Proposed § 1.78(b) also provides that the nonprovisional application or international application designating the United States of America must be filed not later than twelve months after the date on which the provisional application was filed (35 U.S.C. 119(e)), and that this twelve-month period is subject to 35 U.S.C. 21(b) and § 1.7(a) (proposed § 1.78(b)(1)). 35 U.S.C. 21(b) and § 1.7(a) provide that when the day, or the last day, for taking any action (*e.g.,* filing a nonprovisional application within twelve months of the date on which the provisional application was filed) or paying any fee in the Office falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken, or fee paid, on the next succeeding secular or business day. Proposed § 1.78(b) otherwise contains the provisions of current § 1.78(a)(4) and (a)(5) (with the changes in *Provisions for Claiming the Benefit of a Provisional Application with a Non-English Specification and Other Miscellaneous Matters,* 70 FR 56119 (Sept. 26, 2005), 1299 *Off. Gaz. Pat. Office* 142 (Oct. 25, 2005) (final rule)).

Proposed § 1.78(c) contains provisions relating to delayed claims under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application. Proposed § 1.78(c) contains the provisions of current § 1.78(a)(6).

Proposed § 1.78(d) contains provisions relating to claims under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed nonprovisional or international application.

Proposed § 1.78(d)(1) provides certain conditions under which an application may claim the benefit of a prior-filed nonprovisional application or international application designating the United States of America under 35 U.S.C. 120, 121, or 365(c) and § 1.78.

The Office will refuse to enter, or will delete if already present, any specific reference to a prior-filed application that is not permitted by § 1.78(d)(1) (*i.e.,* any claim for the benefit of a prior-filed nonprovisional application or international application designating the United States of America that does not meet one of the conditions specified in §§ 1.78(d)(1)(i) through 1.78(d)(1)(iii) and in which a petition under § 1.78(d)(1)(iv) either has not been filed or is not granted). If the claim for the benefit of a prior-filed nonprovisional application or international application designating the United States of America is not permitted by § 1.78(d)(1), the Office will refuse any benefit under 35 U.S.C. 120, 121, or 365(c) and § 1.78 of the prior-filed nonprovisional application or international application designating the United States of America during proceedings before the Office.

Proposed § 1.78(d)(1) provides that a nonprovisional application that is a continuation application as defined in § 1.78(a)(2) or a continuation-in-part application as defined in § 1.78(a)(4) may claim the benefit under 35 U.S.C. 120, 121, or 365(c)) of only a single prior-filed application, if the benefit of such prior-filed application is not claimed in any other nonprovisional application other than a divisional application in compliance with § 1.78(d)(1)(ii), and no request for continued examination under § 1.114 has been filed in the prior-filed application (proposed § 1.78(d)(1)(i)). This provision will permit an applicant to continue prosecution of an application (other than a continuing application) via a continuation or continuation-in-part application as an alternative to a request for continued examination under § 1.114 (in the event that the prior-filed application is a design application, the applicant needs to add or claim subject matter not disclosed in the prior-filed application, or the applicant has other reasons for preferring a continuation or continuation-in-part application over a request for continued examination under § 1.114).

Proposed § 1.78(d)(1)(i) will also permit an applicant to continue prosecution of claims in a continuation-in-part application (via a "further" continuation or continuation-in-part application) that are directed solely to subject matter added in a "first" continuation-in-part application (provided that the "further" continuation or continuation-in-part application does not also claim the benefit of the prior-filed application relative to the "first" continuation-in-part application). At least one claim of a later-filed application must be disclosed in the prior-filed application in the manner provided by 35 U.S.C. 112, ¶ 1, for the later-filed application to actually receive the benefit of the filing date of the prior-filed application (35 U.S.C. 120), and the term of any resulting patent will be measured under 35 U.S.C. 154(a)(2) from the filing date of the prior-filed application, even if the later-filed application never receives any benefit from the prior-filed application. *See Abbott Lab.* v. *Novopharm Ltd.,* 104 F.3d 1305, 1309, 41 USPQ2d 1535, 1537 (Fed. Cir. 1997). Thus, the Office is not proposing to require that such "further" continuation or continuation-in-part application contain a showing that all of the claims are directed solely to subject matter added in the "first" continuation-in-part application. Rather, proposed § 1.78(d)(1)(i) permits the "further" continuation or continuation-in-part application to claim the benefit of the first continuation-in-part application, but does not permit the "further" continuation or continuation-in-part application to also claim the benefit of the prior-filed initial application (the prior-filed application relative to the first continuation-in-part application). For example, consider an applicant who files: (1) An initial application, "A": (2) a continuation-in-part application, "B," claiming the benefit of application A; and (3) a "further" continuation or continuation-in-part application "C," claiming the benefit of application B. Under proposed 1.78(d)(i), application C could not claim any benefit from application A (except as permitted under proposed § 1.78(d)(1)(iv)).

Proposed § 1.78(d)(1)(i) will also permit an applicant whose application (other than a continuing application) contains rejected claims and allowed claims to obtain a patent on the allowed claims and continue prosecution of the rejected or other claims in a continuation or continuation-in-part application.

Proposed § 1.78(d)(1) also provides that a nonprovisional application that is a divisional application as defined in § 1.78(a)(3) may claim the benefit under 35 U.S.C. 120, 121, or 365(c)) of only a single prior-filed application, if the prior-filed application was subject to a requirement of unity of invention under PCT Rule 13 or a requirement for restriction under 35 U.S.C. 121, and the divisional application contains only claims directed to an invention or inventions that were identified in such requirement of unity of invention or for restriction but were not elected for examination in the prior-filed application (proposed § 1.78(d)(1)(ii)). This will permit an applicant to obtain examination of claims that were withdrawn from consideration in the prior-filed application due to a requirement of unity of invention under PCT Rule 13 or a requirement for restriction under 35 U.S.C. 121. Proposed § 1.78(d)(1)(ii) permits "involuntary" divisional applications (a continuing application filed as a result of a requirement of unity of invention under PCT Rule 13 or requirement for restriction under 35 U.S.C. 121 in the prior-filed application), but does not permit "voluntary divisional" applications (a continuing application not filed as a result of a requirement of unity of invention under PCT Rule 13 or requirement for restriction under 35 U.S.C. 121 in the prior-filed application).

Proposed § 1.78(d)(1) also provides that a nonprovisional application that is either a continuation application as defined in § 1.78(a)(2) or a continuation-in-part application as defined in § 1.78(a)(4) may claim the benefit under 35 U.S.C. 120, 121, or 365(c)) of only either a single divisional application in compliance with § 1.78(d)(1)(ii) and the prior-filed application whose benefit is claimed in such single divisional application, if no request for continued examination under § 1.114 has been filed in the prior-filed divisional application (proposed § 1.78(d)(1)(iii)). This provision will permit an applicant to continue prosecution of a divisional application via a single continuation application or continuation-in-part application as an alternative to a request for continued examination under § 1.114. Proposed § 1.78(d)(1)(iii), however, would not allow an applicant to file more than a single continuation application or continuation-in-part application of a divisional application as of right. Proposed § 1.78(d)(1)(iii) will also permit an applicant whose divisional application contains rejected claims and allowed claims to obtain a patent on the allowed claims, and continue prosecution of the rejected or other claims in a single continuation or continuation-in-part application.

Proposed § 1.78(d)(1) also provides that a continuing nonprovisional application that is filed to obtain consideration of an amendment, argument, or evidence that could not have been submitted during the prosecution of the prior-filed application may claim the benefit under 35 U.S.C. 120, 121, or 365(c) of such prior-filed application (proposed § 1.78(d)(1)(iv)). Proposed § 1.78(d)(1)(iv) specifically provides that such a continuing nonprovisional

application must have filed therein a petition accompanied by the fee set forth in § 1.17(f) and a showing to the satisfaction of the Director that the amendment, argument, or evidence could not have been submitted during the prosecution of the prior-filed application. This will permit an applicant to continue prosecution of an application via a continuing application to obtain consideration of an amendment, argument, or evidence that could not have been submitted during the prosecution of the prior-filed application. Applicants are permitted to submit any desired amendment, argument, or evidence after the first Office action in the prior-filed application, and are further permitted to file either a single continuation or continuation-in-part application (proposed §§ 1.78(d)(1)(i) and 1.78(d)(1)(iii)) or a single request for continued examination under § 1.114 to submit any desired amendment, argument, or evidence before or after the first Office action in the continuation or continuation-in-part application or request for continued examination under § 1.114. Since multiple opportunities are given to submit any desired amendment, argument, or evidence, that an amendment, argument, or evidence is refused entry because prosecution in the prior-filed application is again closed (after the filing of a continuation or continuation-in-part application (proposed §§ 1.78(d)(1)(i) and 1.78(d)(1)(iii)) or a request for continued examination under § 1.114) will not by itself be a sufficient reason to warrant the grant of a petition under § 1.78(d)(1)(iv). Rather, an applicant will be expected to demonstrate why the amendment, argument, or evidence could not have been submitted prior to the close of prosecution in the prior-filed application. Proposed § 1.78(d)(1)(iv) also sets forth the time period within which such a petition must be provided: (1) If the later-filed continuing application is an application filed under 35 U.S.C. 111(a), within four months from the actual filing date of the later-filed application; and (2) if the later-filed continuing application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, within four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application.

Proposed § 1.78(d) also provides that the Office will refuse to enter, or will delete if present, any specific reference to a prior-filed application that is not permitted by proposed § 1.78(d) (proposed § 1.78(d)(3)). If the claim for the benefit of a prior-filed nonprovisional application or international application designating the United States of America is not permitted by § 1.78(d)(1), the Office will refuse any benefit under 35 U.S.C. 120, 121, or 365(c) and § 1.78 of the prior-filed nonprovisional application or international application designating the United States of America during proceedings before the Office. Proposed § 1.78(d) also provides that the entry of or failure to delete a specific reference to a prior-filed application that is not permitted by § 1.78(d)(1) does not constitute a waiver of the provisions of § 1.78(d)(1). The grant of a petition under § 1.78(d)(1)(iv) or waiver of a requirement of § 1.78(d)(1) would be only by an explicit decision by the Office, and would not occur by implication due to the entry of or failure to delete a specific reference to a prior-filed application that is not permitted by § 1.78(d)(1).

Proposed § 1.78(d)(3) also includes the parenthetical "(*i.e.*, whether the later-filed application is a continuation, divisional, or continuation-in-part of the prior-filed nonprovisional application or international application)" to clarify in the rules of practice what is meant by the requirement that an applicant identify (currently stated as indicate) the relationship of the applications. *See* MPEP § 201.11. Proposed § 1.78(d)(3) also provides that if an application is identified as a continuation-in-part application, the applicant must identify which claim or claims in the continuation-in-part application are disclosed in the manner provided by 35 U.S.C. 112, ¶ 1, in the prior-filed application. Any claim in the continuation-in-part application that is not identified as being disclosed in the manner provided by 35 U.S.C. 112, ¶ 1, in the prior-filed application will be treated as entitled only to the filing date of the continuation-in-part application.

Proposed § 1.78(d) also does not contain the provision that the prior-filed application disclose the invention claimed in at least one claim of the later-filed application in the manner provided by 35 U.S.C. 112, ¶ 1. It is necessary for the prior-filed application to disclose the invention claimed in at least one claim of the later-filed application in the manner provided by 35 U.S.C. 112, ¶ 1, for the later-filed application to actually receive the benefit of the filing date of the prior-filed application (35 U.S.C. 120), but the Office does not require such a disclosure as a condition of permitting an application to claim the benefit of the filing date of a prior-filed application. *See* MPEP § 201.08 ("Unless the filing date of the earlier nonprovisional application is actually needed * * *, there is no need for the Office to make a determination as to whether the requirement of 35 U.S.C. 120, that the earlier nonprovisional application discloses the invention of the second application in the manner provided by 35 U.S.C. 112, ¶ 1, is met and whether a substantial portion of all of the earlier nonprovisional application is repeated in the second application in a continuation-in-part situation. Accordingly, an alleged continuation-in-part application should be permitted to claim the benefit of the filing date of an earlier nonprovisional application if the alleged continuation-in-part application complies with the * * * formal requirements of 35 U.S.C. 120.").

Proposed § 1.78(d) also provides that cross-references to applications for which a benefit is not claimed under title 35, United States Code, must be located in a separate paragraph from the references required by 35 U.S.C. 119(e) or 120 and § 1.78 to applications for which a benefit is claimed under 35 U.S.C. 119(e), 120, 121, or 365(c) (proposed § 1.78(d)(6)).

Proposed § 1.78(d) otherwise contains the provisions of current § 1.78(a)(1) and (a)(2).

Proposed § 1.78(e) contains provisions relating to delayed claims under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed nonprovisional or international application. Proposed § 1.78(e) provides that a petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application will not be granted in an application in which a request for continued examination under § 1.114 has been filed. Proposed § 1.114(f) does not permit a request for continued examination in a continuing application (other than a divisional application in compliance with § 1.78(d)(1)(ii)), without a petition showing to the satisfaction of the Director that the amendment, argument, or evidence could not have been submitted prior to the close of prosecution in the application. Thus, proposed § 1.78(e) provides that an applicant may not add a delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application in an application in which a request for continued examination under § 1.114 has been filed. Proposed § 1.78(e) otherwise contains the provisions of current § 1.78(a)(3).

Proposed § 1.78(f) contains provisions relating to applications naming at least one inventor in common and containing patentably indistinct claims. Proposed § 1.78(f)(1) provides that if a nonprovisional application has a filing date that is the same as or within two months of the filing date of one or more other pending nonprovisional applications or patents, taking into account any filing date for which a benefit is sought under title 35, United States Code, names at least one inventor in common with the one or more other pending nonprovisional applications or patents, and is owned by the same person, or subject to an obligation of assignment to the same person, as the one or more other pending nonprovisional applications or patents, the applicant must identify each such other application or patent by application number (*i.e.*, series code and serial number) and patent number (if applicable). This identification requirement would also apply to each identified application, because if the identifying application has a filing date that is the same as or within two months of the filing date of the identified application, the identified application has a filing date that is the same as or within two months of the filing date of the identifying application. The application or patent may be identified in the specification in the paragraph containing cross-references to applications for which a benefit is not claimed under title 35, United States Code (proposed § 1.78(d)(6)), or may be identified in a separate paper. Proposed § 1.78(f)(1) also provides that the identification of one or more other nonprovisional applications under this paragraph must be within four months from the actual filing date of a nonprovisional application filed under 35 U.S.C. 111(a), or within four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371.

Proposed § 1.78(f)(2) provides that if the circumstances set forth in proposed § 1.78(f)(1) exist and the nonprovisional application has the same filing date as the one or more other pending nonprovisional applications or patents, taking into account any filing date for which a benefit is sought under title 35, United States Code, and contains substantial overlapping disclosure as the one or more other pending nonprovisional applications or patents, a rebuttable presumption shall exist that the nonprovisional application contains at least one claim that is not patentably distinct from at least one of the claims in the one or more other pending or patented nonprovisional applications. Proposed § 1.78(f)(2) also provides that in such a situation, the applicant in the nonprovisional application must either: (1) rebut this presumption by explaining to the satisfaction of the Director how the application contains only claims that are patentably distinct from the claims in each of such other pending applications or patents; or (2) submit a terminal disclaimer in accordance with § 1.321(c). In addition, proposed § 1.78(f)(2) provides that where one or more other pending nonprovisional applications containing patentably indistinct claims have been identified, the applicant must explain to the satisfaction of the Director why it is necessary that there are two or more pending nonprovisional applications naming at least one inventor in common and owned by the same person, or subject to an obligation of assignment to the same person, which contain patentably indistinct claims.

As discussed previously, where an applicant chooses to file multiple applications that are substantially the same it will be the applicant's responsibility to assist the Office in resolving potential double patenting situations rather than taking no action until faced with a double patenting rejection. Thus, if an Office action must include a double patenting rejection, it is because the applicant has not yet met his or her responsibility to resolve the double patenting situation by filing the appropriate terminal disclaimer. Therefore, the inclusion of a new double patenting rejection in a second or subsequent Office action will not preclude the Office action from being made final (assuming that the conditions in MPEP § 706.07(a) are otherwise met).

Proposed § 1.78(f)(3) provides that in the absence of good and sufficient reason for there being two or more pending nonprovisional applications naming at least one inventor in common and owned by the same person, or subject to an obligation of assignment to the same person, which contain patentably indistinct claims, the Office may require elimination of the patentably indistinct claims from all but one of the applications. The Office expects to apply this provision primarily in situations covered by proposed § 1.78(f)(2)(ii), under which applicants must explain to the satisfaction of the Director why it is necessary that there are two or more pending nonprovisional applications naming at least one inventor in common and owned by the same person, or subject to an obligation of assignment to the same person, which contain patentably indistinct claims. The Office, however, may require that an applicant provide good and sufficient reason whenever there are two or more pending nonprovisional applications naming at least one inventor in common and owned by the same person, or subject to an obligation of assignment to the same person, which contain patentably indistinct claims (*i.e.*, in situations other than those covered by § 1.78(f)(2) or even § 1.78(f)(1)).

Proposed § 1.78(g) contains provisions relating to applications or patents under reexamination naming different inventors and containing patentably indistinct claims. Proposed § 1.78(g) contains the provisions of current § 1.78(c), except that "conflicting claims" is proposed to be changed to "patentably indistinct claims" for clarity and for consistency with the language of proposed § 1.78(f).

Proposed § 1.78(h) covers the situation in which parties to a joint research agreement are treated (in essence) as a common owner for purposes of 35 U.S.C. 103 by virtue of the CREATE Act. Proposed § 1.78(h) provides that if an application discloses or is amended to disclose the names of parties to a joint research agreement (35 U.S.C. 103(c)(2)(C)), the parties to the joint research agreement are considered to be the same person for purposes of § 1.78. The CREATE Act amended 35 U.S.C. 103(c) to provide that subject matter developed by another person shall be treated as owned by the same person or subject to an obligation of assignment to the same person for purposes of determining obviousness if three conditions are met: (1) The claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the date the claimed invention was made; (2) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and (3) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement. *See Changes to Implement the Cooperative Research and Technology Enhancement Act of 2004*, 70 FR 1818, 1818 (Jan. 11, 2005), 1291 *Off. Gaz. Pat. Office* 58, 58–59 (Feb. 8, 2005). Proposed § 1.78(h) also provides that if the application is amended to disclose the names of parties to a joint research agreement under 35 U.S.C. 103(c)(2)(C), the identification of such one or more other nonprovisional applications as required by § 1.78(f)(1)

must be submitted with the amendment under 35 U.S.C. 103(c)(2)(C) unless such identification is or has been submitted within the four-month period specified in § 1.78(f)(1).

The proposed changes to § 1.78 (if adopted) would be applicable to any application filed on or after the effective date of the final rule. Thus, any application filed on or after the effective date of the final rule seeking to claim the benefit of more than a single prior-filed nonprovisional application or international application under 35 U.S.C. 120, 121, 365(c) and § 1.78 would need to either meet the requirements specified in proposed § 1.78(d)(1)(iii) or include a petition under proposed § 1.78(d)(1)(iv). That is, an applicant may only file one continuation or continuation-in-part application (and not "one more" continuation or continuation-in-part application) after the effective date of the final rule without meeting the requirements specified in proposed § 1.78(d)(1)(iii) or including a petition under proposed § 1.78(d)(1)(iv).

Conforming changes: The proposed reorganization and revision of § 1.78 would also require conforming changes to §§ 1.17, 1.52, 1.53, 1.76, and 1.110.

Section 1.114: Proposed § 1.114(a) adds the phrase "subject to the conditions of this section" to make clear that an applicant may not file an unrestricted number of requests for continued examination. Proposed § 1.114(a) otherwise contains the provisions of current § 1.114(a).

Proposed § 1.114(f) provides that an applicant may not file more than a single request for continued examination under § 1.114 in any application, and that an applicant may not file a request for continued examination under § 1.114 in any continuing application (§ 1.78(a)(1)) other than a divisional application in compliance with § 1.78(d)(1)(ii), unless the request for continued examination also includes a petition accompanied by the fee set forth in § 1.17(f) and a showing to the satisfaction of the Director that the amendment, argument, or evidence could not have been submitted prior to the close of prosecution in the application. Thus, an applicant may file a single request for continued examination in a non-continuing application, or in a divisional application in compliance with § 1.78(d)(1)(ii), without a showing to the satisfaction of the Director that the amendment, argument, or evidence could not have been submitted prior to the close of prosecution in the application. Otherwise, a request for continued examination must be accompanied by a petition accompanied by the fee set forth in § 1.17(f) and a showing to the satisfaction of the Director that the amendment, argument, or evidence could not have been submitted prior to the close of prosecution in the application. Since multiple opportunities are given to submit any desired amendment, argument, or evidence, that an amendment, argument, or evidence is refused entry because prosecution in the application is again closed (after the filing of a continuation or continuation-in-part application (§§ 1.78(d)(1)(i) and 1.78(d)(1)(iii)) or a request for continued examination under § 1.114) will not by itself be a sufficient reason to warrant the grant of a petition under § 1.114(f). Rather, an applicant will be expected to demonstrate why the amendment, argument, or evidence could not have been submitted prior to the close of prosecution in the application.

Proposed § 1.114(f) further provides that any other proffer of a request for continued examination in an application not on appeal will be treated as a submission under § 1.116, and that any other proffer of a request for continued examination in an application on appeal will be treated only as a request to withdraw the appeal. Thus, a second or subsequent request for continued examination that does not include the required petition will not have the same effect as a first request for continued examination.

The proposed changes to § 1.114 (if adopted) would be applicable to any application in which a request for continued examination is filed on or after the effective date of the final rule. Thus, any request for continued examination filed on or after the effective date of the final rule in an application in which a request for continued examination has previously been filed must include a petition under proposed § 1.114(f). That is, an applicant may only file one request for continued examination (and not "one more" request for continued examination) after the effective date of the final rule without a petition under proposed § 1.114(f).

Section 1.495: Proposed § 1.495(g) provides that if the documents and fees contain conflicting indications as between an application under 35 U.S.C. 111 and a submission to enter the national stage under 35 U.S.C. 371, the documents and fees will be treated as a submission to enter the national stage under 35 U.S.C. 371. It is Office experience that, in the majority of cases, documents and fees that contain conflicting indications as between an application under 35 U.S.C. 111 and a submission to enter the national stage under 35 U.S.C. 371 were intended as a submission under 35 U.S.C. 371. In addition, the changes to § 1.78 (if adopted) would render the option of filing of a "bypass" continuation application under 35 U.S.C. 111(a) less preferable to simply entering the national stage under 35 U.S.C. 371 in an international application. A "bypass" continuation application is an application for patent filed under 35 U.S.C. 111(a) that claims the benefit of the filing date of an earlier international application that did not enter the national stage under 35 U.S.C. 371.

Rule Making Considerations

Regulatory Flexibility Act: For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

In Fiscal Year 2005, the Office received approximately 317,000 nonprovisional applications. Of those, about 62,870 (about 19,700 small entity) were continuing applications. In addition, the Office received about 52,750 (about 8,970 small entity) requests for continued examination. This notice proposes to require that: (1) Any second or subsequent continuation or continuation-in-part application and any second or subsequent request for continued examination include a showing to the satisfaction of the Director as to why the amendment, argument, or evidence could not have been submitted prior to the close of prosecution after a single continuation or continuation-in-part application or request for continued examination; and (2) multiple applications that have the same effective filing date, overlapping disclosure, a common inventor, and a common assignee include either an explanation to the satisfaction of the Director of how the claims are patentably distinct, or a terminal disclaimer and explanation to the satisfaction of the Director of why patentably indistinct claims have been filed in multiple applications.

Continuing Applications: This notice proposes to require that any second or subsequent continuation or continuation-in-part application include a petition (with a $400.00 petition fee) with a showing to the satisfaction of the Director as to why the amendment, argument, or evidence could not have been submitted prior to the close of

prosecution in the prior-filed application.

This proposed rule change will not affect a substantial number of small entities. Of the 62,870 continuing applications filed in fiscal year 2005, about 44,500 (about 15,665 small entity) were designated as continuation or continuation-in-part applications, and about 11,790 (about 4,470 small entity) of these applications were a second or subsequent continuation or continuation-in-part application. Therefore, the proposed petition fee and showing requirement would impact relatively few applications (about 3.7 percent or 11,790 out of 317,000) and relatively few small entity applications (about 4.8 percent or 4,470 out of 93,000). It is also noted that this proposed change would not disproportionately impact small entity applicants. The primary impact of this change would be to require applicants to make a *bona fide* attempt to advance the application to final agency action by submitting any desired amendment, argument, or evidence prior to the close of prosecution after a single continuation or continuation-in-part application or single request for continued examination (except as permitted by § 1.116 or § 41.33).

The notice does not propose any petition fee or showing requirement for a divisional application, but only requires that a divisional application be the result of a requirement of unity of invention under PCT Rule 13 or a requirement for restriction under 35 U.S.C. 121 in the prior-filed application. Thus, an applicant may obtain examination of claims to an invention in the prior-filed application because the Office did not impose a requirement of unity of invention under PCT Rule 13 or a requirement for restriction under 35 U.S.C. 121 in the prior-filed application, or the applicant may obtain examination of claims to an invention in a divisional application because the Office did impose a requirement of unity of invention under PCT Rule 13 or a requirement for restriction under 35 U.S.C. 121 in the prior-filed application. Of the 62,870 continuing applications filed in fiscal year 2005, about 18,370 (about 4,000 small entity) were designated as divisional applications.

Requests for Continued Examination: This notice proposes to require that any second or subsequent request for continued examination include a petition (with a $400.00 petition fee) with a showing to the satisfaction of the Director as to why the amendment, argument, or evidence could not have been submitted prior to the close of prosecution.

This proposed rule change will not affect a substantial number of small entities. Of the 52,750 requests for continued examination filed in fiscal year 2005, about 9,925 (about 1,796 small entity) were a second or subsequent request for continued examination. Therefore, the proposed petition fee and showing requirement would impact relatively few applicants (about 3.1 percent or 9,925 out of 317,000) and relatively few small entity applicants (about 1.9 percent or 1,796 out of 93,000). It is also noted that this proposed change would not disproportionately impact small entity applicants. The primary impact of this change would be to require applicants to make a *bona fide* attempt to advance the application to final agency action by submitting any desired amendment, argument, or evidence prior to the close of prosecution after a single continuation application or single request for continued examination (except as permitted by § 1.116 or § 41.33).

Patentably Indistinct Claims: Finally, this notice proposes that applicants (or assignees) who file multiple applications having the same effective filing date, overlapping disclosure, and a common inventor include either an explanation of how the claims are patentably distinct, or a terminal disclaimer and explanation of why there are patentably indistinct claims in multiple applications. An applicant who files multiple applications containing patentably indistinct claims must in any case submit the appropriate terminal disclaimers to avoid double patenting. *See In re Berg,* 140 F.3d 1428, 1434, 46 USPQ2d 1226, 1231 (Fed. Cir. 1998) (applicants who may file all of their claims in a single application, but instead chose to file such claims in multiple applications, are not entitled to two-way double patenting test).

This proposed rule change does not affect a substantial number of small entities. The Office received about 17,600 (about 3,850 small entity) terminal disclaimers in fiscal year 2004. Based upon the Office's experience with double patenting situations, most of these double patenting situations involved an application and a patent (rather than two applications) containing patentably indistinct claims. In addition, § 1.78(b) currently provides where two or more applications filed by the same applicant contain conflicting (*i.e.*, patentably indistinct) claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application). Therefore, the requirement for an explanation up front as to why there are two or more pending applications by the same applicant (or assignee) containing patentably indistinct claims when that is the case would impact relatively few applicants (about 5.7 percent or 17,600 out of 310,000) and relatively few small entity applicants (about 4.1 percent or 3,850 out of 93,000). It is also noted that this proposed change would not disproportionately impact small entity applicants. Moreover, there are no fees associated with this proposed rule change.

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice has been reviewed and previously approved by OMB under OMB control number 0651–0031. This notice proposes to require that: (1) Any second or subsequent continuation or continuation-in-part application and any second or subsequent request for continued examination include a showing to the satisfaction of the Director as to why the amendment, argument, or evidence could not have been submitted prior to the close of prosecution after a single continuation application or request for continued examination; and (2) multiple applications that have the same effective filing date, overlapping disclosure, a common inventor, and a common assignee include either an explanation to the satisfaction of the Director of how the claims are patentably distinct, or a terminal disclaimer and explanation to the satisfaction of the Director of why patentably indistinct claims have been filed in multiple applications. The United States Patent and Trademark Office is resubmitting an information collection package to OMB for its review and approval because the changes in this notice do affect the information collection requirements associated with the information collection under OMB control number 0651–0031.

The title, description and respondent description of the information collection under OMB control number 0651–0031 is shown below with an estimate of the

annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The title, description and respondent description of the information collection under OMB control number 0651–0031 is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08, PTO/SB/17i, PTO/SB/17p, PTO/SB/21–27, PTO/SB/24B, PTO/SB/30–32, PTO/SB/35–39, PTO/SB/42–43, PTO/SB/61–64, PTO/SB/64a, PTO/SB/67–68, PTO/SB/91–92, PTO/SB/96–97, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B, PTOL–413A.

Type of Review: Approved through July of 2006.

Affected Public: Individuals or households, business or other for-profit institutions, not-for-profit institutions, farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 2,284,439.

Estimated Time per Response: 1 minute and 48 seconds to 12 hours.

Estimated Total Annual Burden Hours: 2,732,441 hours.

Needs and Uses: During the processing of an application for a patent, the applicant or applicant's representative may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information disclosure statement and citation, examination support documents, requests for extensions of time, the establishment of small entity status, abandonment and revival of abandoned applications, disclaimers, appeals, petitions, expedited examination of design applications, transmittal forms, requests to inspect, copy and access patent applications, publication requests, and certificates of mailing, transmittals, and submission of priority documents and amendments.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office; and (2) Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.78 is revised to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a) *Definitions.* (1) *Continuing application.* A continuing application is a nonprovisional application or an international application designating the United States of America that claims the benefit under 35 U.S.C. 120, 121, or 365(c) of a prior-filed nonprovisional application or international application designating the United States of America. An application that does not claim the benefit under 35 U.S.C. 120, 121, or 365(c) of a prior-filed application, is not a continuing application even if the application claims the benefit under 35 U.S.C. 119(e) of a provisional application, claims priority under 35 U.S.C. 119(a)–(d) or 365(b) to a foreign application, or claims priority under 35 U.S.C. 365(a) or (b) to an international application designating at least one country other than the United States of America.

(2) *Continuation application.* A continuation application is a continuing application as defined in paragraph (a)(1) of this section that discloses and claims only an invention or inventions that were disclosed in the prior-filed application.

(3) *Divisional application.* A divisional application is a continuing application as defined in paragraph (a)(1) of this section that discloses and claims only an invention or inventions that were disclosed and claimed in the prior-filed application, but were subject to a requirement of unity of invention under PCT Rule 13 or a requirement for restriction under 35 U.S.C. 121 and not elected for examination in the prior-filed application.

(4) *Continuation-in-part application.* A continuation-in-part application is a continuing application as defined in paragraph (a)(1) of this section that discloses subject matter that was not disclosed in the prior-filed application.

(b) *Claims under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application.* A nonprovisional application, other than for a design patent, or an international application designating the United States of America may claim the benefit of one or more prior-filed provisional applications under the conditions set forth in 35 U.S.C. 119(e) and this paragraph.

(1) The nonprovisional application or international application designating the United States of America must be filed not later than twelve months after the date on which the provisional application was filed. This twelve-month period is subject to 35 U.S.C. 21(b) and § 1.7(a).

(2) Each prior-filed provisional application must name as an inventor at least one inventor named in the later-filed application, must be entitled to a filing date as set forth in § 1.53(c), and the basic filing fee set forth in § 1.16(d) must be paid within the time period set forth in § 1.53(g).

(3) Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed provisional applications must contain or be amended to contain a reference to each such prior-filed provisional application, identifying it by the provisional application number (consisting of series code and serial number). If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must

contain or be amended to contain such reference in the first sentence(s) following the title.

(4) The reference required by paragraph (b)(3) of this section must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed provisional application. If the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed provisional application. These time periods are not extendable. Except as provided in paragraph (c) of this section, the failure to timely submit the reference is considered a waiver of any benefit under 35 U.S.C. 119(e) of such prior-filed provisional application. The time periods in this paragraph do not apply if the later-filed application is:

(i) An application filed under 35 U.S.C. 111(a) before November 29, 2000; or

(ii) An international application filed under 35 U.S.C. 363 before November 29, 2000.

(5) If the prior-filed provisional application was filed in a language other than English and both an English-language translation of the prior-filed provisional application and a statement that the translation is accurate were not previously filed in the prior-filed provisional application, applicant will be notified and given a period of time within which to file, in the prior-filed provisional application, the translation and the statement. If the notice is mailed in a pending nonprovisional application, a timely reply to such a notice must include the filing in the nonprovisional application of either a confirmation that the translation and statement were filed in the provisional application, or an amendment or Supplemental Application Data Sheet withdrawing the benefit claim, or the nonprovisional application will be abandoned. The translation and statement may be filed in the provisional application, even if the provisional application has become abandoned.

(c) *Delayed claims under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application.* If the reference required by 35 U.S.C. 119(e) and paragraph (b)(3) of this section is presented in a nonprovisional application after the time period provided by paragraph (b)(4) of this section, the claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application may be accepted if submitted during the pendency of the later-filed application and if the reference identifying the prior-filed application by provisional application number was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application must be accompanied by:

(1) The reference required by 35 U.S.C. 119(e) and paragraph (b)(3) of this section to the prior-filed provisional application, unless previously submitted;

(2) The surcharge set forth in § 1.17(t); and

(3) A statement that the entire delay between the date the claim was due under paragraph (b)(4) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

(d) *Claims under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed nonprovisional or international application.* A nonprovisional application (including an international application that has entered the national stage after compliance with 35 U.S.C. 371) may claim the benefit of one or more prior-filed copending nonprovisional applications or international applications designating the United States of America under the conditions set forth in 35 U.S.C. 120 and this paragraph.

(1) A nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications or international applications designating the United States of America must satisfy at least one of the following conditions:

(i) The nonprovisional application is either a continuation application as defined in paragraph (a)(2) of this section or a continuation-in-part application as defined in paragraph (a)(4) of this section that claims the benefit under 35 U.S.C. 120, 121, or 365(c) of only a single prior-filed application, the benefit of such prior-filed application not being claimed in any other nonprovisional application other than a divisional application in compliance with paragraph (d)(1)(ii) of this section, and no request for continued examination under § 1.114 has been filed in the prior-filed application.

(ii) The nonprovisional application is a divisional application as defined in paragraph (a)(3) of this section that claims the benefit under 35 U.S.C. 120, 121, or 365(c) of only a single prior-filed application, the prior-filed application was subject to a requirement of unity of invention under PCT Rule 13 or a requirement for restriction under 35 U.S.C. 121, and the divisional application contains only claims directed to an invention or inventions that were identified in such requirement of unity of invention or requirement for restriction but were not elected for examination in the prior-filed application.

(iii) The nonprovisional application is either a continuation application as defined in paragraph (a)(2) of this section or a continuation-in-part application as defined in paragraph (a)(4) of this section that claims the benefit under 35 U.S.C. 120, 121, or 365(c) of only a single divisional application in compliance with paragraph (d)(1)(ii) of this section and the single prior-filed application whose benefit is claimed in such divisional application, and no request for continued examination under § 1.114 has been filed in such prior-filed divisional application.

(iv) The nonprovisional application is a continuing application as defined in paragraph (a)(1) of this section that claims the benefit under 35 U.S.C. 120, 121, or 365(c) of a prior-filed application, which continuing application is filed to obtain consideration of an amendment, argument, or evidence that could not have been submitted during the prosecution of the prior-filed application. The nonprovisional application must have filed therein a petition accompanied by the fee set forth in § 1.17(f) and a showing to the satisfaction of the Director that the amendment, argument, or evidence could not have been submitted during the prosecution of the prior-filed application. If the later-filed continuing application is an application filed under 35 U.S.C. 111(a), this petition must be submitted within four months from the actual filing date of the later-filed continuing application, and if the later-filed continuing application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this petition must be submitted within four months from the date on which the national stage commenced under 35

U.S.C. 371(b) or (f) in the later-filed international application.

(2) Each prior-filed application must name as an inventor at least one inventor named in the later-filed application and must be either an international application entitled to a filing date in accordance with PCT Article 11 and designating the United States of America, or a nonprovisional application under 35 U.S.C. 111(a) that is entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and have paid therein the basic filing fee set forth in § 1.16 within the pendency of the application.

(3) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application, or international application designating the United States of America, claiming the benefit of one or more prior-filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and identifying the relationship of the applications (*i.e.*, whether the later-filed application is a continuation, divisional, or continuation-in-part of the prior-filed nonprovisional application or international application). If an application is identified as a continuation-in-part application, the applicant must identify which claim or claims in the continuation-in-part application are disclosed in the manner provided by the first paragraph of 35 U.S.C. 112 in the prior-filed application. If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence(s) following the title. The Office will refuse to enter, or will delete if present, any specific reference to a prior-filed application that is not permitted by paragraph (d)(1) of this section. The entry of or failure to delete a specific reference to a prior-filed application that is not permitted by paragraph (d)(1) of this section does not constitute a waiver of the provisions of paragraph (d)(1) of this section.

(4) The reference required by 35 U.S.C. 120 and paragraph (d)(3) of this section must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. If the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed application. These time periods are not extendable. Except as provided in paragraph (e) of this section, the failure to timely submit the reference required by 35 U.S.C. 120 and paragraph (d)(3) of this section is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior-filed application. The time periods in this paragraph do not apply if the later-filed application is:

(i) An application for a design patent;

(ii) An application filed under 35 U.S.C. 111(a) before November 29, 2000; or

(iii) An international application filed under 35 U.S.C. 363 before November 29, 2000.

(5) The request for a continued prosecution application under § 1.53(d) is the specific reference required by 35 U.S.C. 120 to the prior-filed application. The identification of an application by application number under this section is the identification of every application assigned that application number necessary for a specific reference required by 35 U.S.C. 120 to every such application assigned that application number.

(6) Cross-references to other related applications may be made when appropriate (see § 1.14). Cross-references to applications for which a benefit is not claimed under title 35, United States Code, must be located in a separate paragraph from the references required by 35 U.S.C. 119(e) or 120 and this section to applications for which a benefit is claimed under 35 U.S.C. 119(e), 120, 121, or 365(c).

(e) *Delayed claims under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed nonprovisional application or international application.* If the reference required by 35 U.S.C. 120 and paragraph (d)(3) of this section is presented after the time period provided by paragraph (d)(4) of this section, the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior-filed application by application number or international application number and international filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application will not be granted in an application in which a request for continued examination under § 1.114 has been filed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:

(1) The reference required by 35 U.S.C. 120 and paragraph (d)(3) of this section to the prior-filed application, unless previously submitted;

(2) The surcharge set forth in § 1.17(t); and

(3) A statement that the entire delay between the date the claim was due under paragraph (d)(4) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

(f) *Applications and patents naming at least one inventor in common.* (1) If a nonprovisional application has a filing date that is the same as or within two months of the filing date of one or more other pending or patented nonprovisional applications, taking into account any filing date for which a benefit is sought under title 35, United States Code, names at least one inventor in common with the one or more other nonprovisional applications, and is owned by the same person, or subject to an obligation of assignment to the same person, as the one or more other nonprovisional applications, the applicant must identify each such other application by application number (*i.e.*, series code and serial number) and patent number (if applicable). The identification of such one or more other nonprovisional applications if required by this paragraph must be submitted within four months from the actual filing date of a nonprovisional application filed under 35 U.S.C. 111(a), or within four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371.

(2) If a nonprovisional application has the same filing date as the filing date of one or more other pending or patented nonprovisional applications, taking into account any filing date for which a benefit is sought under title 35, United

States Code, names at least one inventor in common with the one or more other pending or patented nonprovisional applications, is owned by the same person, or subject to an obligation of assignment to the same person, and contains substantial overlapping disclosure as the one or more other pending or patented nonprovisional applications, a rebuttable presumption shall exist that the nonprovisional application contains at least one claim that is not patentably distinct from at least one of the claims in the one or more other pending or patented nonprovisional applications. In this situation, the applicant in the nonprovisional application must either:

(i) Rebut this presumption by explaining to the satisfaction of the Director how the application contains only claims that are patentably distinct from the claims in each of such other pending applications or patents; or

(ii) Submit a terminal disclaimer in accordance with § 1.321(c). In addition, where one or more other pending nonprovisional applications have been identified, the applicant must explain to the satisfaction of the Director why there are two or more pending nonprovisional applications naming at least one inventor in common and owned by the same person, or subject to an obligation of assignment to the same person, which contain patentably indistinct claims.

(3) In the absence of good and sufficient reason for there being two or more pending nonprovisional applications naming at least one inventor in common and owned by the same person, or subject to an obligation of assignment to the same person, which contain patentably indistinct claims, the Office may require elimination of the patentably indistinct claims from all but one of the applications.

(g) *Applications or patents under reexamination naming different inventors and containing patentably indistinct claims.* If an application or a patent under reexamination and at least one other application naming different inventors are owned by the same party and contain patentably indistinct claims, and there is no statement of record indicating that the claimed inventions were commonly owned or subject to an obligation of assignment to the same person at the time the later invention was made, the Office may require the assignee to state whether the claimed inventions were commonly owned or subject to an obligation of assignment to the same person at the time the later invention was made, and if not, indicate which named inventor is the prior inventor.

(h) *Parties to a joint research agreement.* If an application discloses or is amended to disclose the names of parties to a joint research agreement (35 U.S.C. 103(c)(2)(C)), the parties to the joint research agreement are considered to be the same person for purposes of this section. If the application is amended to disclose the names of parties to a joint research agreement under 35 U.S.C. 103(c)(2)(C), the identification of such one or more other nonprovisional applications as required by paragraph (f)(1) of this section must be submitted with the amendment under 35 U.S.C. 103(c)(2)(C) unless such identification is or has been submitted within the four-month period specified in paragraph (f)(1) of this section.

3. Section 1.114 is amended by revising the introductory text of paragraph (a) and by adding a new paragraph (f) to read as follows:

§ 1.114 Request for continued examination.

(a) If prosecution in an application is closed, an applicant may, subject to the conditions of this section, file a request for continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

* * * * *

(f) An applicant may not file more than a single request for continued examination under this section in any application, and may not file any request for continued examination under this section in any continuing application (§ 1.78(a)(1)) other than a divisional application in compliance with § 1.78(d)(1)(ii), unless the request for continued examination also includes a petition accompanied by the fee set forth in § 1.17(f) and a showing to the satisfaction of the Director that the amendment, argument, or evidence could not have been submitted prior to the close of prosecution in the application. Any other proffer of a request for continued examination in an application not on appeal will be treated as a submission under § 1.116. Any other proffer of a request for continued examination in an application on appeal will be treated only as a request to withdraw the appeal.

4. Section 1.495 is amended by revising paragraph (g) to read as follows:

§ 1.495 Entering the national stage in the United States of America.

* * * * *

(g) The documents and fees submitted under paragraphs (b) and (c) of this section must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371. If the documents and fees contain conflicting indications as between an application under 35 U.S.C. 111 and a submission to enter the national stage under 35 U.S.C. 371, the documents and fees will be treated as a submission to enter the national stage under 35 U.S.C. 371.

* * * * *

Dated: December 19, 2005.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 05–24528 Filed 12–30–05; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 2005–P–067]

RIN 0651–AB94

Changes to Practice for the Examination of Claims in Patent Applications

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rule making.

SUMMARY: The United States Patent and Trademark Office (Office) is proposing to revise the rules of practice relating the examination of claims in patent applications. The Office is proposing to focus its initial examination on the claims designated by the applicant as representative claims. The representative claims will be all of the independent claims and only the dependent claims that are expressly designated by the applicant for initial examination. The Office is also proposing that if an application contains more than ten independent claims (a rare occurrence), or if the applicant wishes to have initial examination of more than ten representative claims, then the applicant must provide an examination support document that covers all of the independent claims and the dependent claims designated for initial examination. The changes proposed in this notice will allow the Office to do a better, more thorough and reliable examination since the number of claims receiving initial examination will be at a level which can be more effectively and efficiently evaluated by an examiner.

Comment Deadline Date: To be ensured of consideration, written comments must be received on or before May 3, 2006. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to *AB94Comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Robert A. Clarke. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site *(http://www.regulations.gov)* for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Office Internet Web site (address: *http://www.uspto.gov*). *Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.*

FOR FURTHER INFORMATION CONTACT: Robert A. Clarke, Deputy Director, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–7735, by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Robert A. Clarke, or preferably via electronic mail message addressed to: *robert.clarke@uspto.gov.*

SUPPLEMENTARY INFORMATION: The Office's current practice for examination of claims in patent applications provides for an initial examination of each and every claim, independent and dependent, in every Office action on the merits of the application. The Office's current practice for examination of claims in patent applications is less efficient than it could be because it requires an initial patentability examination of every claim in an application, notwithstanding that this effort is wasted when the patentability of the dependent claims stand or fall together with the independent claim from which they directly or indirectly depend. Thus, the Office is proposing to delay the patentability examination of most dependent claims until the application is otherwise in condition for allowance. The Office, however, will examine every claim in an application before issuing a patent on the application.

Both the Board of Patent Appeals and Interferences (BPAI) and the courts commonly employ some form of using representative claims to focus and manage issues in a case. The BPAI's representative claim practice provides that if the applicant desires the BPAI to consider the patentability of a claim separately from the other claims also subject to the same ground of rejection, the applicant must include a subheading in the arguments section of the appeal brief setting out an argument for the separate patentability of the claim. See 37 CFR 41.37(c)(1)(vii). If there are multiple claims subject to the same ground of rejection and the applicant argues the patentability of the claims as a group, the BPAI will select a claim from the group of claims and decide the appeal with respect to that group of claims on the basis of the selected claim alone. *See id.*

The Office plans to apply a similar practice to the BPAI's representative claim practice to the examination of patent applications. Specifically, the Office will provide an initial patentability examination to the claims designated by the applicant as representative claims. The representative claims will be all of the independent claims and the dependent claims that are expressly designated by the applicant for initial examination. Thus, each independent claim and each dependent claim that is designated for initial examination will be treated as a representative claim for examination purposes. The examination of the dependent claims that are not designated for initial examination will be deferred until the application is otherwise in condition for allowance. Specifically, applicants will be required to assist the Office in eliminating unnecessary effort by permitting the Office to provide an initial examination to a more focused set of claims; that is, only to the independent and designated dependent claims. The Office will continue its practice of withdrawing from further consideration claims that are drawn to a non-elected invention.

The Office previously requested comments on a proposal to limit the number of total and independent claims that would be examined in an application. *See Changes to Implement the Patent Business Goals,* 63 FR 53497, 53506–08 (Oct. 5, 1998), 1215 *Off. Gaz. Pat. Office* 87, 95–97 (Oct. 27, 1998). The Office, however, ultimately decided not to proceed with a proposed change to 37 CFR 1.75 to limit the number of total and independent claims that would be examined in an application. *See Changes to Implement the Patent Business Goals,* 64 FR 53771, 53774–75 (Oct. 4, 1999), 1228 *Off. Gaz. Pat. Office* 15, 17–18 (Nov. 2, 1999). Nevertheless, applications which contain a large number of claims continue to absorb an inordinate amount of patent examining resources, as they are extremely difficult to properly process and examine. The Office is now proposing changes to its practice for examination of claims in patent applications that avoids placing limits on the number of total or independent claims that may be presented for examination in an application, but does share with an applicant who presents more than a sufficiently limited number of claims for simultaneous examination the burden so imposed. Specifically, an applicant who declines to designate fewer than ten representative claims for initial examination will be required to assist the Office with this more extensive examination by providing an examination support document covering all of the claims designated for initial examination.

The Office is proposing the following changes to the rules of practice in title 37 of the Code of Federal Regulations (CFR) for the examination of claims in an application: First, the Office will give an initial examination only to the representative claims, namely, all of the independent claims and only the dependent claims that are expressly designated for initial examination. Second, if the number of representative claims is greater than ten, the Office will require the applicant to share the burden of examining the application by submitting an examination support document covering all of the representative claims.

The Office's Patent Application Locating and Monitoring (PALM) records show that the Office has received 216,327 nonprovisional applications since January 1, 2005 (based upon PALM records as of October 13, 2005). The Office's PALM records show that only 2,522 (866 small entity), or about 1.2 percent of all nonprovisional applications, included more than ten independent claims. Thus, this proposal will allow for the examination of every independent claim in 98.8 percent of the applications filed since January 1, 2005, without any additional effort by the applicant.

The Office conducted a random survey of five hundred applications in which an appeal brief was filed in fiscal year 2004. Only nine applications out of these five-hundred applications (1.8 percent) had more than ten representative claims. In addition, the average and median numbers of representative claims in these five hundred appeals were 2.73 and 2, respectively.

The Office currently has a procedure for requesting accelerated examination under which an application will be taken out of turn for examination if the applicant files a petition to make special and (*inter alia*):

Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, *etc.* The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement if the claims in the corresponding foreign application are of the same or similar scope to the claims in the U.S. application for which special status is requested;

Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111(b) and (c), how the claimed subject matter is patentable over the references.

See Manual of Patent Examining Procedure § 708.02 (8th ed. 2001) (Rev. 3, August 2005) (MPEP). Based upon the Office's PALM records, it appears that about 1,225 applicants have filed a petition to make special under this accelerated examination procedure to date in fiscal year 2005. The proposed examination support document requirements are similar to the requirements set forth in MPEP § 708.02 for having an application taken out of turn for examination under this accelerated examination procedure.

These changes will mean faster more effective examination for the typical applicant without any additional work on the applicant's part, but a small minority of applicants who place an extensive burden on the Office's ability to effectively examine applications will be required to assist the Office in handling the burden they place on the Office.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

Section 1.75: Section 1.75(b) (introductory text) is proposed to be amended to set forth the provisions concerning dependent claims that are currently in § 1.75(c), namely, that "[o]ne or more claims may be presented in dependent form, referring back to and further limiting another claim or claims in the same application," and that "[c]laims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim." Section 1.75(b) (introductory text) is further proposed to be amended to provide that unless a dependent claim has been designated for initial examination prior to the application being taken up for examination, the examination of such dependent claim may be held in abeyance until the application is otherwise in condition for allowance. *See also* proposed § 1.104(b). As discussed previously, the Office will provide an initial patentability examination to each of the representative claims. If the applicant fails to designate any dependent claim for initial examination, the Office will initially examine only the independent claims. Thus, the applicant must expressly designate which (if any) dependent claims are to be given initial examination, even if there are ten or fewer total (independent and dependent) claims in the application. Section 1.75(b) (introductory text) is further proposed to be amended to provide that the mere presentation of a dependent claim in an application is not a designation of the dependent claim for initial examination. An applicant may designate one or more dependent claims for initial examination in the transmittal letter or in a separate paper, but the mere inclusion of a dependent claim in an application will not be considered a designation of the dependent claim for initial examination.

Section 1.75(b)(1) is proposed to provide that an applicant must submit an examination support document in compliance with § 1.261 that covers each representative claim if either: (1) The application contains, or is amended to contain, more than ten independent claims; or (2) the number of representative claims (*i.e.*, the independent claims plus the number of dependent claims designated for initial examination) is greater than ten. Thus, the applicant may designate a number of dependent claims up to ten minus the number of independent claims in the application to be given initial examination without filing an examination support document under proposed § 1.261. For example, if an application contains three independent claims and a total of twenty claims, the applicant may designate up to seven (ten minus three) dependent claims for initial examination without filing an examination support document under § 1.261.

Proposed § 1.75(b)(1) further provides that a dependent claim (including a multiple dependent claim) designated for examination must depend only from a claim or claims that are also designated for examination. Thus, if dependent claim 3 depends upon dependent claim 2, which in turn depends upon independent claim 1, the applicant cannot designate claim 3 for initial examination without also designating claim 2 for initial examination. Likewise, if multiple dependent claim 4 depends (in the alternative) upon dependent claim 3 and dependent claim 2, and claim 3 and claim 2 each depend upon independent claim 1, the applicant cannot designate claim 4 for initial examination without also designating claim 3 and claim 2 for initial examination.

Proposed § 1.75(b)(2) provides for claims in dependent form that are effectively independent claims. Proposed § 1.75(b)(2) provides that a claim that refers to another claim but does not incorporate by reference all of the limitations of the claim to which such claim refers will be treated as an independent claim for fee calculation purposes under § 1.16 (or § 1.492) and for purposes of § 1.75(b)(1). The Office must treat such claims as independent claims because 35 U.S.C. 112, ¶ 4, provides (*inter alia*) that a dependent "shall be construed to incorporate by reference all the limitations of the claim to which it refers." *See* 35 U.S.C. 112, ¶ 4. Examples of claims that appear to be a dependent claim but are in actuality an independent claim that references another claim in short-hand form without incorporating by reference all the limitations of the claim to which it refers are included in the applications at issue in the following decisions: *In re Thorpe,* 777 F.2d 695, 696, 227 USPQ 964, 965 (Fed. Cir. 1985) ("product by process" claim 44); *In re Kuehl,* 475 F.2d 658, 659, 177 USPQ 250, 251 (CCPA 1973) (claim 6); and *Ex parte Rao,* 1995 WL 1747720, *1 (BPAI 1998) (claim 8). Proposed § 1.75(b)(2) also provides that a claim that refers to a claim of a different statutory class of invention will be treated as an independent claim for fee calculation purposes under § 1.16 (or § 1.492) and for purposes of paragraph (b)(1) of this section. Examples of such claims are included in the applications at issue in the following decisions: *Thorpe,* 777 F.2d at 696, 227 USPQ at 965 ("product by process" claim 44); *Ex parte Porter,*

25 USPQ2d 1144, 1145 (BPAI 1992) (claim 6); and *Ex parte Blattner,* 2 USPQ2d 2047, 2047–48 (BPAI 1987) (claim 14).

Section 1.75(b)(3) is proposed to provide that the applicant will be notified if an application contains or is amended to contain more than ten independent claims, or the number of independent claims plus the number of dependent claims designated for initial examination is greater than ten, but an examination support document under § 1.261 has been omitted (proposed § 1.75(b)(3)). Proposed § 1.75(b)(3) further provides that if prosecution of the application is not closed and it appears that omission was inadvertent, the notice will set a one-month time period that is not extendable under § 1.136(a) within which to avoid abandonment of the application the applicant must: (1) File an examination support document in compliance with § 1.261; (2) cancel the requisite number of independent claims and rescind the designation for initial examination of the requisite number of dependent claims that necessitate an examination support document in compliance with § 1.261; or (3) submit a suggested requirement for restriction accompanied by an election without traverse of an invention to which there are drawn fewer than ten independent claims and fewer than the residual number of designated dependent claims. The phrase "an application in which prosecution is not closed" means an application that is not under appeal, and in which the last Office action on the merits is not a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application. The submission of additional claims after close of prosecution would be treated under the provisions of §§ 1.116, 1.312, 41.33 or 41.110. Due to the increase in patent pendency that would result from the routine granting of extensions in these situations, the Office is limiting extensions of this one-month time period to those for which there is sufficient cause (§ 1.136(b)).

Section 1.75(b)(4) is proposed to provide for the situation in which: (1) A nonprovisional application contains at least one claim that is patentably indistinct from at least one claim in one or more other nonprovisional applications or patents; and (2) the one or more other nonprovisional applications or patents either name at least one inventor in common and are owned by the same person as the nonprovisional application, or are subject to an obligation of assignment to the same person as the first nonprovisional application; and (3) the at least one patentably indistinct claim has support under 35 U.S.C. 112, ¶ 1, in the earliest of such one or more other nonprovisional applications or patents. Proposed § 1.75(b)(4) provides that in this situation, the Office may require elimination of the patentably indistinct claims from all but one of the nonprovisional applications. In addition, proposed § 1.75(b)(4) provides that if the patentably indistinct claims are not eliminated from all but one of the nonprovisional applications, the Office will treat the independent claims and the dependent claims designated for initial examination in the first nonprovisional application and in each of such other nonprovisional applications or patents as present in each of the nonprovisional applications for purposes of § 1.75(b)(1). That is, if the conditions specified in proposed § 1.75(b)(4)) are present, the Office would treat each such nonprovisional application as having the total of all of the representative claims for purposes of determining whether an examination support document is required by proposed § 1.75(b)(1) (but not for purposes of calculating the excess claims fee due in each such nonprovisional application).

If two or more inventions are claimed in an application, the examiner may, if appropriate, still require that the application be restricted to a single invention. The criteria for making such a restriction requirement would remain the same. Any restriction requirement would be based on all the claims pending in the application, and not just the claims designated for initial examination. If the examiner makes a restriction requirement and applicant's election results in representative claims being withdrawn from consideration, applicant may designate additional representative claims for initial examination without filing an examination support document under proposed § 1.261 so long as the total number of representative claims drawn to the elected invention does not exceed ten. Any additional dependent claims designated for initial examination must be drawn to the elected invention. The designation of the additional dependent claims must be made in the reply to the restriction requirement or as permitted by the examiner.

The Office is also requesting comments on how claims written in the alternative form, such as claims in an alternative form permitted by *Ex parte Markush,* 1925 Dec. Comm'r Pat. 126 (1924), should be counted for purposes of proposed § 1.75(b)(1). Should the Office simply count each alternative in the claim as a separate claim for purposes of § 1.75(b)(1)? Should the Office count each alternative in the claim as a separate claim for purposes of § 1.75(b)(1) unless the applicant shows that each alternative in the claim includes a common core structure and common core property or activity, in which the common core structure constitutes a structurally distinctive portion in view of existing prior art and is essential to the common property or activity (*see* MPEP 1850)?

Section 1.75(c) is proposed to be amended to provide only for multiple dependent claims (with dependent claims being provided for in § 1.75(b)), and to further provide that multiple dependent claims and claims depending from a multiple dependent claim will be considered to be that number of claims to which direct reference is made in the multiple dependent claim for purposes of § 1.75(b)(1).

Section 1.104: Section 1.104(a)(1) is proposed to be amended to change "invention as claimed" to "invention as claimed in the independent and designated dependent claims" for consistency with the change to examination practice. The Office plans to generally delay the patentability examination of any dependent claim that was not designated for initial examination until the application is otherwise in condition for allowance.

Section 1.104(b) is proposed to be amended to add that "[t]he examination of a dependent claim that has not been designated for initial examination may be held in abeyance until the application is otherwise in condition for allowance."

Section 1.104(c) is proposed to be amended to change "[i]f the invention is not considered, or not considered patentable as claimed" to "[i]f the invention claimed in the independent and designated dependent claims is not considered patentable" for consistency with the proposed change to examination practice.

Section 1.105: Section 1.105(a)(1) is proposed to be amended to provide that an applicant may be required to set forth where (by page and line or paragraph number) the specification of the application, or any application the benefit of whose filing date is sought under title 35, United States Code, provides written description support for the invention as defined in the claims (independent or dependent), and of manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, under 35

U.S.C. 112, ¶ 1. Therefore, in situations in which it is not readily apparent where the specification of the application, or an application for which a benefit is claimed, provides written description support under 35 U.S.C. 112, ¶ 1, for a claim or a limitation of a claim, the examiner may require the applicant to provide such information. The Office considers this authority to be inherent under the patent statute and existing rules (including current § 1.105), but is proposing to amend § 1.105 to make the authority explicit. *See* MPEP 2163.04.

Section 1.117: The Consolidated Appropriations Act 2005 (Consolidated Appropriations Act), provides that 35 U.S.C. 41(a), (b), and (d) shall be administered in a manner that revises patent application fees (35 U.S.C. 41(a)) and patent maintenance fees (35 U.S.C. 41(b)), and provides for a separate filing fee (35 U.S.C. 41(a)), search fee (35 U.S.C. 41(d)(1)), and examination fee (35 U.S.C. 41(a)(3)) during fiscal years 2005 and 2006. *See* Pub. L. 108–447, 118 Stat. 2809 (2004). The Consolidated Appropriations Act also provides that the Office may, by regulation, provide for a refund of any part of the excess claim fee specified in 35 U.S.C. 41(a)(2) for any claim that is canceled before an examination on the merits has been made of the application under 35 U.S.C. 131. *See* 35 U.S.C. 41(a)(2) (as administered during fiscal years 2005 and 2006 pursuant to the Consolidated Appropriations Act). Section 1.117 is proposed to be added to implement this provision of the Consolidated Appropriations Act. Proposed § 1.117(a) provides that if an amendment canceling a claim is submitted in reply to a notice under § 1.75(b)(3) and prior to the first examination on the merits of the application, the applicant may request a refund of any fee paid on or after December 8, 2004, for such claim under § 1.16(h), (i), or (j) or under § 1.492(d), (e), or (f). Thus, if an applicant decides to cancel the claims necessitating an examination support document under § 1.261, rather than provide an examination support document in compliance with § 1.261, the applicant may request a refund of any fee paid on or after December 8, 2004, for such claim under § 1.16(h), (i), or (j) or under § 1.492(d), (e), or (f). As the Consolidated Appropriations Act authorizes a refund only for a claim that has been canceled before an examination on the merits has been made of the application under 35 U.S.C. 131, the Office cannot grant a refund on the basis of the mere rescission of a designation of a dependent claim for initial examination (rather than cancellation of the dependent claim), or on the basis of the cancellation of a claim after an examination on the merits has been made of the application under 35 U.S.C. 131. If an amendment adding one or more claims is also filed before the application has been taken up for examination on the merits, the Office may apply first any refund under § 1.117 resulting from the cancellation of one or more claims to any excess claims fees due as a result of such an amendment.

Proposed § 1.117(b) provides that a claim in an application filed under 35 U.S.C. 111(a) will also be considered canceled for purposes of this section if a declaration of express abandonment under § 1.138(d) has been filed in an application containing such claim in sufficient time to permit the appropriate officials to recognize the abandonment and remove the application from the files for examination before the application has been taken up for examination.

Proposed § 1.117(c) provides that any request for refund under this section must be filed within two months from the date on which the claim was canceled, and that this two-month period is not extendable.

The patent fee provisions of the Consolidated Appropriations Act expire (in the absence of subsequent legislation) on September 30, 2006 (at the end of fiscal year 2006). Therefore, in the absence of subsequent legislation, the refund provision in proposed § 1.117 will likewise expire on September 30, 2006 (at the end of fiscal year 2006), regardless of the date on which the excess claims fee was paid.

Section 1.261: Section 1.261 is proposed to be added to set forth what an "examination support document" (proposed to be required under § 1.75(b)(1)) entails.

Proposed § 1.261(a) provides that an examination support document as used in 37 CFR part 1 means a document that includes: (1) A statement that a preexamination search was conducted, including an identification (in the manner set forth in MPEP § 719) of the field of search by class and subclass and the date of the search, where applicable, and, for database searches, the search logic or chemical structure or sequence used as a query, the name of the file or files searched and the database service, and the date of the search; (2) an information disclosure statement in compliance with § 1.98 citing the reference or references deemed most closely related to the subject matter of each of the independent claims and designated dependent claims; (3) an identification of all the limitations of the independent claims and designated dependent claims that are disclosed by the references cited; (4) a detailed explanation of how each of the independent claims and designated dependent claims are patentable over the references cited with the particularity required by § 1.111(b) and (c); (5) a concise statement of the utility of the invention as defined in each of the independent claims; and (6) a showing of where each limitation of the independent claims and the designated dependent claims finds support under 35 U.S.C. 112, ¶ 1, in the written description of the specification (and if the application claims the benefit of one or more applications under title 35, United States Code, the showing must also include where each limitation of the independent claims and the designated dependent claims finds support under 35 U.S.C. 112, ¶ 1, in each such application in which such support exists).

Section 1.133(a)(2) was recently amended to permit an interview before first Office action in any application if the examiner determines that such an interview would advance prosecution of the application. If the examiner, after considering the application and examination support document, still has questions concerning the invention or how the claims define over the prior art or are patentable, the examiner may request an interview before first Office action. If the applicant declines such a request for an interview or if the interview does not result in the examiner obtaining the necessary information, the examiner may issue a requirement for information under § 1.105 to obtain such information.

Proposed § 1.261(b) provides that the preexamination search referred to in § 1.261(a)(1) must involve U.S. patents and patent application publications, foreign patent documents, and non-patent literature, unless the applicant can justify with reasonable certainty that no references more pertinent than those already identified are likely to be found in the eliminated source and includes such a justification with the statement required by § 1.261(a)(1). Proposed § 1.261(b) also provides that the preexamination search referred to in § 1.261(a)(1) must encompass all of the features of the independent claims and must cover all of the features of the designated dependent claims separately from the claim or claims from which the dependent claim depends, giving the claims the broadest reasonable interpretation. A search report from a foreign patent office will not satisfy the requirement in § 1.261(a)(1) for a

preexamination search unless the search report satisfies the requirements for a preexamination search set forth in § 1.261.

Proposed § 1.261(c) provides that the applicant will be notified and given a one-month time period within which to file a corrected or supplemental examination support document to avoid abandonment if: (1) The examination support document or pre-examination search is deemed to be insufficient; (2) an explanation of the invention or how the independent and designated dependent claims define the invention is deemed necessary; or (3) the claims have been amended such that the examination support document no longer covers each independent claim. Proposed § 1.261(c) further provides that this one-month period is not extendable under § 1.136(a).

Section 1.704: Section 1.704(c) is proposed to be amended to provide that the failure to file an examination support document in compliance with § 1.261 when necessary under § 1.75(b) is a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application under 35 U.S.C. 154(b)(2)(C) because the failure to provide an examination support document in compliance with § 1.261 when necessary under § 1.75(b) will delay processing or examination of an application because the Office must issue a notice and await the applicant's reply before examination of the application may begin. Therefore, proposed § 1.704(c) provides that where there is a failure to file an examination support document in compliance with § 1.261 when necessary under § 1.75(b), the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is the later of the filing date of the amendment necessitating an examination support document in compliance with § 1.261, or four months from the filing date of the application in an application under 35 U.S.C. 111(a) or from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in an application which entered the national stage from an international application after compliance with 35 U.S.C. 371, and ending on the date that either an examination support document in compliance with § 1.261, or an amendment, a suggested restriction requirement and election (§ 1.75(b)(3)(iii)) that obviates the need for an examination support document under § 1.261, was filed.

The proposed changes to §§ 1.75 and 1.104 (if adopted) would be applicable to any application filed on or after the effective date of the final rule, as well as to any application in which a first Office action on the merits (§ 1.104) was not mailed before the effective date of the final rule. The Office will provide applicants who filed their applications before the effective date of the final rule and who would be affected by the changes in the final rule with an opportunity to designate dependent claims for initial examination, and to submit either an examination support document under § 1.261 (proposed) or a new set of claims to avoid the need for an examination support document (if necessary). The Office appreciates that making the changes in the final rule also applicable to certain applications filed before its effective date will cause inconvenience to some applicants. The Office is also requesting suggestions for ways in which the Office can make the changes in the final rule also applicable to these pending applications with a minimum of inconvenience to such applicants.

Regulatory Flexibility Act: For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

This notice proposes to require an examination support document that covers each independent claim and each dependent claim designated for initial examination if: (1) The application contains or is amended to contain more than ten independent claims; or (2) the number of independent claims plus the number of dependent claims designated for initial examination is greater than ten. There are no fees associated with this proposed rule change.

The changes proposed in this notice will not affect a substantial number of small entities. The Office's PALM records (PALM records as of October 13, 2005) show that the Office has received 216,327 nonprovisional applications (65,785 small entity) since January 1, 2005, with about 2,522 (866 small entity) of these nonprovisional applications including more than ten independent claims. Thus, since January 1, 2005, only 1.2 percent of all nonprovisional applications and 1.3 percent of the small entity nonprovisional applications contain or were amended to contain more than ten independent claims. In addition, Office experience is that most applications which contain more than ten independent claims contain claims that are directed to inventions that are independent and distinct under 35 U.S.C. 121, and the proposed rule permits an applicant to avoid submitting an examination support document by suggesting a requirement for restriction accompanied by an election of an invention to which there are drawn no more than ten independent claims. Therefore, the Office estimates that the proposed examination support document requirement would not impact a substantial number of small entities. It is also noted that the proposed rule change would not disproportionately impact small entity applicants.

The changes proposed in this notice will not have a significant economic impact upon small entities. The primary impact of this change would be to require applicants who submit an excessive number of claims to share the burden of examining the application by filing an examination support document covering the independent claims and the designated dependent claims. There are no fees associated with this proposed rule change. The American Intellectual Property Law Association (AIPLA) 2003 Report of the Economic Survey indicates that the seventy-fifth percentile charge (for those reporting) for a patent novelty search, analysis, and opinion was $2,500.00. Given that the pre-filing preparation of an application containing more than ten independent claims should involve obtaining such a patent novelty search, analysis, and opinion, the Office does not consider the additional cost of providing an examination support document to be a significant economic impact on an applicant who is submitting an application containing more than ten independent claims. In any event, any applicant may avoid the costs of such an examination support document simply by refraining from presenting more than ten independent claims in an application.

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice has been reviewed and previously approved by OMB under OMB control number 0651–0031. This notice proposes to require an examination support document that covers each independent claim and each dependent claim designated for initial examination if: (1) The application contains or is amended to contain more than ten independent claims; or (2) the number of independent claims plus the number of dependent claims designated for initial examination is greater than ten. The United States Patent and Trademark Office is resubmitting an information collection package to OMB for its review and approval because the changes in this notice do affect the information collection requirements associated with the information collection under OMB control number 0651–0031.

The title, description and respondent description of the information collection under OMB control number 0651–0031 is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08, PTO/SB/17i, PTO/SB/17p, PTO/SB/21–27, PTO/SB/24B, PTO/SB/30–32, PTO/SB/35–39, PTO/SB/42–43, PTO/SB/61–64, PTO/SB/64a, PTO/SB/67–68, PTO/SB/91–92, PTO/SB/96–97, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B, PTOL–413A.

Type of Review: Approved through July of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 2,284,439.

Estimated Time Per Response: 1 minute and 48 seconds to 12 hours.

Estimated Total Annual Burden Hours: 2,732,441 hours.

Needs and Uses: During the processing of an application for a patent, the applicant or applicant's representative may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information disclosure statement and citation, examination support documents, requests for extensions of time, the establishment of small entity status, abandonment and revival of abandoned applications, disclaimers, appeals, petitions, expedited examination of design applications, transmittal forms, requests to inspect, copy and access patent applications, publication requests, and certificates of mailing, transmittals, and submission of priority documents and amendments.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to: (1) the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office; and (2) Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313–1450.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.75 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.75 Claim(s)

* * * * *

(b) More than one claim may be presented provided they differ substantially from each other and are not unduly multiplied. One or more claims may be presented in dependent form, referring back to and further limiting another claim or claims in the same application. Claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim. Unless a dependent claim has been designated for initial examination prior to when the application has been taken up for examination, the examination of such dependent claim may be held in abeyance until the application is otherwise in condition for allowance. The mere presentation of a dependent claim in an application is not a designation of the dependent claim for initial examination.

(1) An applicant must submit an examination support document in compliance with § 1.261 that covers each independent claim and each dependent claim designated for initial examination if either:

(i) The application contains or is amended to contain more than ten independent claims; or

(ii) The number of independent claims plus the number of dependent claims designated for initial examination is greater than ten. A dependent claim (including a multiple dependent claim) designated for initial examination must depend only from a claim or claims that are also designated for initial examination.

(2) A claim that refers to another claim but does not incorporate by reference all of the limitations of the claim to which such claim refers will be treated as an independent claim for fee calculation purposes under § 1.16 (or § 1.492) and for purposes of paragraph (b)(1) of this section. A claim that refers to a claim of a different statutory class of invention will also be treated as an independent claim for fee calculation purposes under § 1.16 (or § 1.492) and for purposes of paragraph (b)(1) of this section.

(3) The applicant will be notified if an application contains or is amended to contain more than ten independent claims, or the number of independent claims plus the number of dependent claims designated for initial examination in such an application is greater than ten, but an examination support document under § 1.261 has been omitted. If prosecution of the application is not closed and it appears that omission was inadvertent, the notice will set a one-month time period that is not extendable under § 1.136(a) within which, to avoid abandonment of the application, the applicant must:

(i) File an examination support document in compliance with § 1.261 that covers each independent claim and each dependent claim designated for initial examination;

(ii) Cancel the requisite number of independent claims and rescind the designation for initial examination of the requisite number of dependent claims that necessitate an examination support document under § 1.261; or

(iii) Submit a suggested requirement for restriction accompanied by an election without traverse of an invention to which there are drawn no more than ten independent claims as well as no more than ten total independent claims and dependent claims designated for initial examination.

(4) If a nonprovisional application contains at least one claim that is patentably indistinct from at least one claim in one or more other nonprovisional applications or patents, and if such one or more other nonprovisional applications or patents and the first nonprovisional application are owned by the same person, or are subject to an obligation of assignment to the same person, and if such patentably indistinct claim has support under the first paragraph of 35 U.S.C. 112 in the earliest of such one or more other nonprovisional applications or patents, the Office may require elimination of the patentably indistinct claims from all but one of the nonprovisional applications. If the patentably indistinct claims are not eliminated from all but one of the nonprovisional applications, the Office will treat the independent claims and the dependent claims designated for initial examination in the first nonprovisional application and in each of such other nonprovisional applications or patents as present in each of the nonprovisional applications for purposes of paragraph (b)(1) of this section.

(c) Any dependent claim which refers to more than one other claim ("multiple dependent claim") shall refer to such other claims in the alternative only. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. For fee calculation purposes under § 1.16 (or § 1.492) and for purposes of paragraph (b)(1) of this section, a multiple dependent claim will be considered to be that number of claims to which direct reference is made therein. For fee calculation purposes under § 1.16 (or § 1.492) and for purposes of paragraph (b)(1) of this section, any claim depending from a multiple dependent claim will be considered to be that number of claims to which direct reference is made in that multiple dependent claim. In addition to the other filing fees, any original application which is filed with, or is amended to include, multiple dependent claims must have paid therein the fee set forth in § 1.16(j). A multiple dependent claim shall be construed to incorporate by reference all the limitations of each of the particular claims in relation to which it is being considered.

* * * * *

3. Section 1.104 is amended by revising paragraphs (a)(1), (b), and (c)(1) to read as follows:

§ 1.104 Nature of examination.

(a) *Examiner's action.* (1) On taking up an application for examination or a patent in a reexamination proceeding, the examiner shall make a thorough study thereof and shall make a thorough investigation of the available prior art relating to the subject matter of the invention as claimed in the independent and the designated dependent claims. The examination shall be complete with respect both to compliance of the application or patent under reexamination with the applicable statutes and rules and to the patentability of the invention as claimed in the independent and the designated dependent claims, as well as with respect to matters of form, unless otherwise indicated.

* * * * *

(b) *Completeness of examiner's action.* The examiner's action will be complete as to all matters, except that in appropriate circumstances, such as misjoinder of invention, fundamental defects in the application, and the like, the action of the examiner may be limited to such matters before further action is made. However, matters of form need not be raised by the examiner until a claim is found allowable. The examination of a dependent claim that has not been designated for initial examination may be held in abeyance until the application is otherwise in condition for allowance.

(c) *Rejection of claims.* (1) If the invention claimed in the independent and designated dependent claims is not considered patentable, the independent and the designated dependent claims, or those considered unpatentable, will be rejected.

* * * * *

4. Section 1.105 is amended by adding a new paragraph (a)(1)(ix) to read as follows:

§ 1.105 Requirements for information.

(a)(1) * * *

(ix) *Support in the specification:* Where (by page or paragraph and line) the specification of the application, or any application the benefit of whose filing date is sought under title 35, United States Code, provides written description support for the invention as defined in the claims (independent or dependent), and of manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention, under the first paragraph of 35 U.S.C. 112.

* * * * *

5. Section 1.117 is added to read as follows:

§ 1.117 Refund due to cancellation of claim.

(a) If an amendment canceling a claim is submitted in reply to a notice under § 1.75(b)(3) and prior to the first examination on the merits of the application, the applicant may request a refund of any fee paid on or after December 8, 2004, for such claim under § 1.16(h), (i), or (j) or under § 1.492(d), (e), or (f).

(b) A claim in an application filed under 35 U.S.C. 111(a) will also be considered canceled for purposes of this section if a declaration of express abandonment under § 1.138(d) has been filed in an application containing such claim in sufficient time to permit the appropriate officials to recognize the abandonment and remove the application from the files for examination before the application has been taken up for examination.

(c) Any request for refund under this section must be filed within two months from the date on which the claim was canceled. This two-month period is not extendable.

6. Section 1.261 is added in numerical order under the undesignated center heading "Miscellaneous Provisions" to read as follows:

§ 1.261 Examination support document.

(a) An examination support document as used in this part means a document that includes the following:

(1) A statement that a preexamination search was conducted, including an identification of the field of search by United States class and subclass and the date of the search, where applicable, and, for database searches, the search logic or chemical structure or sequence used as a query, the name of the file or files searched and the database service, and the date of the search;

(2) An information disclosure statement in compliance with § 1.98 citing the reference or references deemed most closely related to the

subject matter of each of the independent claims and designated dependent claims;

(3) For each reference cited, an identification of all the limitations of the independent claims and designated dependent claims that are disclosed by the reference;

(4) A detailed explanation of how each of the independent claims and designated dependent claims are patentable over the references cited with the particularity required by § 1.111(b) and (c);

(5) A concise statement of the utility of the invention as defined in each of the independent claims; and

(6) A showing of where each limitation of the independent claims and the designated dependent claims finds support under the first paragraph of 35 U.S.C. 112 in the written description of the specification. If the application claims the benefit of one or more applications under title 35, United States Code, the showing must also include where each limitation of the independent claims and the designated dependent claims finds support under the first paragraph of 35 U.S.C. 112 in each such application in which such support exists.

(b) The preexamination search referred to in paragraph (a)(1) of this section must involve U.S. patents and patent application publications, foreign patent documents, and non-patent literature, unless the applicant can justify with reasonable certainty that no references more pertinent than those already identified are likely to be found in the eliminated source and includes such a justification with the statement required by paragraph (a)(1) of this section. The preexamination search referred to in paragraph (a)(1) of this section must be directed to the claimed invention and encompass all of the features of the independent claims and must cover all of the features of the designated dependent claims separately from the claim or claims from which the dependent claim depends, giving the claims the broadest reasonable interpretation. The preexamination search referred to in paragraph (a)(1) of this section must also encompass the disclosed features that may be claimed.

(c) If an examination support document is required, but the examination support document or pre-examination search is deemed to be insufficient, an explanation of the invention or how the independent and designated dependent claims define the invention is deemed necessary, or the claims have been amended such that the examination support document no longer covers each independent claim and each designated dependent claim, applicant will be notified and given a one-month time period within which to file a corrected or supplemental examination support document to avoid abandonment. This one-month period is not extendable under § 1.136(a).

7. Section 1.704 is amended by redesignating paragraph (c)(11) as (c)(12) and adding new paragraph (c)(11) to read as follows:

§ 1.704 Reduction of period of adjustment of patent term.

* * * * *

(c) * * *

(11) Failure to file an examination support document in compliance with § 1.261 when necessary under § 1.75(b), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is the later of the filing date of the amendment necessitating an examination support document under § 1.261, or four months from the filing date of the application in an application under 35 U.S.C. 111(a) or from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in an application which entered the national stage from an international application after compliance with 35 U.S.C. 371, and ending on the date that either an examination support document in compliance with § 1.261, or an amendment or suggested restriction requirement and election (§ 1.75(b)(3)(iii)) that obviates the need for an examination support document under § 1.261, was filed;

* * * * *

Dated: December 19, 2005.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 05–24529 Filed 12–30–05; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[OAR–2004–0489; FRL–8016–8]

RIN 2060–AN20

Air Emissions Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: Today's action proposes changes to EPA's emission inventory reporting requirements. The proposed amendments would consolidate, reduce, and simplify the current requirements; add limited new requirements; and provide additional flexibility to States in the way they collect and report emissions data. The proposed amendments would also accelerate the reporting of emissions data to EPA by State and local agencies. The EPA intends to issue final amendments during 2006.

DATES: Comments must be received on or before May 3, 2006. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before February 2, 2006.

The EPA will hold a public hearing on today's proposal only if requested by February 2, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0489, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: Air Emissions Reporting Requirements Rule, Docket No. OAR–2004–0489, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- Hand Delivery: EPA Docket Center, 1301 Constitution Avenue, NW., Room B102, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0489. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, 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 regulations.gov, or e-mail. The *www.regulations.gov* website is "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 *www.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 the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. For additional instructions on submitting comments, go to unit I.B of the **SUPPLEMENTARY INFORMATION** section of this preamble.

Docket: All documents in the docket are listed in the *www.regulations.gov* index or in hard copy at the Air Emissions Reporting Requirements Rule, Docket No. OAR–2004–0489, 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 legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Emissions Reporting Requirements Rule, Docket No. OAR–2004–0489 is (202) 566–1742. 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.

FOR FURTHER INFORMATION CONTACT: For general questions concerning today's action, please contact Bill Kuykendal, U.S. EPA, Office of Air Quality Planning and Standards, Emissions Monitoring and Analysis Division, Mail Code D205–01, Research Triangle Park, NC, 27711, telephone (919) 541–5372, e-mail at *kuykendal.bill@epa.gov*. For legal questions, please contact Thomas Swegle, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–5546, e-mail at *swegle.thomas@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

Categories and entities potentially regulated by this action include:

Category	NAIC code[1]	Examples of regulated entities
State/local/tribal government.	92411	State, territorial, and local government air quality management programs. Tribal governments are not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This action proposes to have States report their emissions to us. It is possible that some States will require facilities within their jurisdictions to report emissions to the States. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 51.1 of the proposed amendments. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider As I Prepare My Comments for EPA?

1. *Expedited Review.* To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Bill Kuykendal, U.S. EPA, Office of Air Quality Planning and Standards, Emissions Monitoring and Analysis Division, Mail Code D205–01, Research Triangle Park, NC 27711, telephone (919) 541–5372, e-mail *kuykendal.bill@epa.gov.*

2. *Submitting CBI.* Do not submit CBI to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone (919) 541–0880, e-mail at *morales.roberto@epa.gov*, Attention Docket ID No. OAR–2004–0489.

3. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. Where Can I Get a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of today's proposed amendments is also available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed amendments will be placed on the TTN

at *http://www.epa.gov/ttn/chief.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384. A copy of the proposed amendments and fact sheet will also be posted at *http://www.epa.gov/interstateairquality.*

D. Will There Be a Public Hearing?

The EPA will hold a public hearing on today's proposal only if requested by February 2, 2006. The request for a public hearing should be made in writing and addressed to Bill Kuykendal at U.S. EPA, Office of Air Quality Planning and Standards, Emissions Monitoring and Analysis Division, Mail Code D205–01, Research Triangle Park, NC 27711. The hearing, if requested, will be held on a date and at a place published in a separate **Federal Register** notice.

E. How Is This Document Organized?

The information presented in this preamble is organized as follows:

I. General Information
II. Background
A. Existing Emissions Reporting Requirements
B. Proposed Emissions Reporting Requirements
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act

II. Background

In today's action, the Air Emissions Reporting Requirements (AERR) rule, EPA is proposing to amend the emission inventory reporting requirements in 40 CFR part 51, subpart A and in 40 CFR 51.122. In a related action to today's proposed amendments, EPA has promulgated the Clean Air Interstate Rule (CAIR). The EPA believes that it is essential that achievement of the emissions reductions required by the CAIR be verified on a regular basis. Emissions reporting is the principal mechanism to verify these reductions and to assure the downwind affected States and EPA that the ozone and particulate matter (PM) less than or equal to 2.5 micrometers ($PM_{2.5}$) transport problems are being mitigated as required by the CAIR. To this end, EPA has promulgated limited new emissions reporting requirements for States under the CAIR. However, in the CAIR, we explained that there are additional reporting requirements that we believe are important and did not finalize under the CAIR. We are proposing these requirements in today's action. The proposed amendments would also remove or simplify some current emissions reporting requirements which we believe are not necessary or appropriate, for reasons explained below.

Because we are proposing to consolidate and harmonize the new emissions reporting requirements proposed today with two pre-existing sets of emissions reporting requirements, we review in today's action the purpose, authority, and history of emissions reporting requirements in general.

Emissions inventories are critical for the efforts of State, local, and Federal agencies to attain and maintain the national ambient air quality standards (NAAQS) that EPA has established for criteria pollutants such as ozone, PM, and carbon monoxide (CO). Pursuant to its authority under sections 110 and 172 of the CAA, EPA has long required State implementation plans (SIPs) to provide for the submission by States to EPA of emissions inventories containing information regarding the emissions of criteria pollutants and their precursors (e.g., volatile organic compounds (VOC)). The EPA codified these requirements in subpart Q of 40 CFR part 51 in 1979 and amended them in 1987.

The 1990 Amendments to the CAA revised many of the provisions of the CAA related to the attainment of the NAAQS and the protection of visibility in Class I areas. These revisions established new periodic emissions inventory requirements applicable to certain areas that were designated nonattainment for certain pollutants. For example, section 182(a)(3)(A) required States to submit an emissions inventory every 3 years for ozone nonattainment areas beginning in 1993. Similarly, section 187(a)(5) required States to submit an inventory every 3 years for CO nonattainment areas. The EPA, however, did not immediately codify these statutory requirements in the CFR, but simply relied on the statutory language to implement them.

In 1998, EPA promulgated the NO_X SIP Call which requires the affected States and the District of Columbia to submit SIP revisions providing for nitrogen oxides (NO_X) reductions to reduce their adverse impact on downwind ozone nonattainment areas. (See 63 FR 57356, October 27, 1998). As part of that rule, codified in 40 CFR 51.122, EPA established emissions reporting requirements to be included in the SIP revisions required under that action.

Another set of emissions reporting requirements, termed the Consolidated Emissions Reporting Rule (CERR), was promulgated by EPA in 2002, and is codified at 40 CFR part 51, subpart A. (See 67 FR 39602, June 10, 2002). These requirements replaced the requirements previously contained in subpart Q, expanding their geographic and pollutant coverages while simplifying them in other ways.

The principal statutory authority for the emissions inventory reporting requirements outlined in this preamble is found in CAA section 110(a)(2)(F), which provides that SIPs must require "as may be prescribed by the Administrator * * * (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources." Section 301(a) of the CAA provides authority for EPA to promulgate regulations under this provision.[1]

A. Existing Emissions Reporting Requirements

At present, the emissions reporting requirements applicable to States are contained in two different locations: subpart A of 40 CFR part 51 (the CERR) and 40 CFR 51.122 in subpart G (the NO_X SIP Call reporting requirements). This proposed action would consolidate these sections, with modifications as described below. The proposed modifications are intended to achieve the additional reporting needed to verify the reductions required by the CAIR; harmonize, reduce, and simplify the emissions reporting requirements; and make emissions reporting requirements easier.

Under the NO_X SIP Call requirements in 40 CFR 51.122, emissions of NO_X for a defined 5-month ozone season (May 1 through September 30) from sources that the State has subjected to emissions control to comply with the requirements of the NO_X SIP Call are required to be

[1] Other CAA provisions relevant to these proposed amendments include section 172(c)(3) (provides that SIPs for nonattainment areas must include comprehensive, current inventory of actual emissions, including periodic revisions); section 182(a)(3)(A) (emissions inventories from ozone nonattainment areas); and section 187(a)(5) (emissions inventories from CO nonattainment areas).

reported by the affected States to EPA every year. However, emissions of sources reporting directly to EPA as part of the NO_X trading program are not required to be reported by the State to EPA every year. The affected States are also required to report ozone season emissions and typical summer day emissions of NO_X from all sources every third year (2002, 2005, etc.) and in 2007. This triennial reporting process does not have an exemption for sources participating in the emissions trading programs. Section 51.122 requires that a number of data elements be reported in addition to ozone season NO_X emissions. These data elements describe some of the source's specific physical and operational parameters.

Emissions reporting under the NO_X SIP Call as first promulgated was required starting for the emissions reporting year 2002, the year prior to the start of the required emissions reductions. The reports are due to EPA on December 31 of the calendar year following the inventory year. For example, emissions from all sources and types in the 2002 ozone season were required to be reported on December 31, 2003. However, because the Court which heard challenges to the NO_X SIP Call delayed the implementation by one year to 2004, no State was required to start reporting until the 2003 inventory year. In addition, EPA recently promulgated a rule to subject Georgia and Missouri to the NO_X SIP Call with an implementation date of 2007. (See 69 FR 21604, April 21, 2004.) For these States, emissions reporting begins with 2006. The emissions reporting requirements under the NO_X SIP Call affect the District of Columbia and 20 States.

As noted above, the other set of emissions reporting requirements is codified at subpart A of part 51. Although entitled the CERR, this rule left in place the separate 40 CFR 51.122 for the NO_X SIP Call reporting. The CERR requirements were aimed at obtaining emissions information to support a broader set of purposes under the CAA than were the reporting requirements under the NO_X SIP Call. The CERR requirements apply to all States and include the reporting of all criteria pollutants and criteria pollutant precursors.

Like the requirements under the NO_X SIP Call, the CERR requires reporting of all sources at 3-year intervals (2002, 2005, etc.). It requires reporting of certain large sources every year. However, the required reporting date under the CERR is 5 months later than under the NO_X SIP Call reporting requirements. Also, emissions must be reported by all States for the entire year, for a typical day in winter, and a typical day in summer, but not for the 5-month ozone season as is required by the NO_X SIP Call. Finally, the CERR and the NO_X SIP Call differ in what non-emissions data elements must be reported.

The final CAIR included three changes to the above described pre-existing emissions reporting requirements. These requirements are as follows:

1. The new States that are subject to the CAIR requirements, but were not subject to the NO_X SIP Call requirements, are required to report their NO_X emissions for the 5-month (May 1–September 30) ozone season on a triennial basis beginning in 2008.

2. The States that are subject to the CAIR for reasons of $PM_{2.5}$, must report to EPA a set of specified data elements for all sources each year—regardless of size—subject to new controls adopted specifically to meet the CAIR requirements related to $PM_{2.5}$, unless the sources participate in an EPA-administered emissions trading program.

3. The requirement of the NO_X SIP Call for a special all-sources report by affected States for the year 2007, due December 31, 2008, was eliminated.

B. Proposed Emissions Reporting Requirements

Today's action proposes to further consolidate the detailed requirements for emissions reporting by States entirely into subpart A. The proposed amendments would also harmonize the reporting requirements and reduce and simplify them in several ways. The major changes included in the proposed amendments are described below.

Amendments are proposed to subpart A, which contains 40 CFR 51.1 through 51.50, with conforming amendments to 40 CFR 51.122. The proposed amendments would also add new tables to subpart A of part 51.

- In 40 CFR 51.122, we propose to abolish certain requirements entirely and to replace certain requirements with a cross reference to subpart A so that detailed lists of required data elements appear only in subpart A. As amended, 40 CFR 51.122 would continue to specify what pollutants, sources, and time periods the States subject to the NO_X SIP Call must report and when but would no longer list the detailed data elements required for those reports.
- The amended subpart A would list the detailed data elements as well as provide information on submittal procedures, definitions, and other generally applicable provisions.

Taken together, the existing emissions reporting requirements under the NO_X SIP Call, CERR and CAIR are already rather comprehensive in terms of the States covered and the information required. Therefore, the practical impact of the changes proposed today is to impose several new requirements and to accelerate the overall calendar for emission reporting.

In all States, we are proposing to expand the definition of what sources must be reported in point source format, so that fewer sources would be included in nonpoint source emissions.[2] We are proposing to base the requirement for point source format reporting on whether the source is a major source under 40 CFR part 70 for the pollutants for which reporting is required, *i.e.*, for CO, VOC, NO_X, sulfur dioxide (SO_2), $PM_{2.5}$, PM_{10}, and ammonia but without regard to emissions of hazardous air pollutants. Currently, the requirement for point source reporting is based on thresholds of actual emissions in the year of the inventory report. While it has always been an option for States to include all such sources, and we know that some States already do, this change may require more sources to be reported as point sources every 3rd year. Affected States will continue to report their actual emissions. The new approach would make it possible to better track changes in source emissions, shutdowns, and startups over time. Because States have an existing list of sources based on 40 CFR part 70 requirements, this approach would result in a more stable universe of reporting point sources, which in turn would facilitate elimination of overlaps and gaps in estimating point source emissions, as compared to nonpoint source emissions. Under this proposal, States would know well in advance of the start of the inventory year which sources would need to be reported. We are proposing that these new requirements begin with the 2008 inventory year, the report for which would be due to EPA by December 31, 2009.

[2] We use the term "nonpoint source" to refer to a stationary source that is treated for inventory purposes as part of an aggregated source category rather than as an individual facility. In the existing subpart A of part 51, such emissions sources are referred to as "area sources." However, the term "area source" is used in section 112 of the CAA to indicate a non-major source of hazardous air pollutants, which could be a point source. As emissions inventory activities increasingly encompass both NAAQS-related pollutants and hazardous air pollutants, the differing uses of "area source" can cause confusion. Accordingly, EPA proposes to substitute the term "nonpoint source" for the term "area source" in subpart A and in § 51.122 to avoid confusion.

We received a number of comments on this provision regarding point source format reporting when it was made in the CAIR supplemental proposal. The majority of comments supported changing the definition of a point source for reporting purposes to that in 40 CFR part 70. Some comments in opposition to the supplemental proposal appear to have been based on the impression that EPA was proposing reporting of potential rather than actual emissions, which was not the case. While the status as a major source depends on potential to emit, a State must report actual emissions.

In addition to the new requirements, several proposed changes would alter existing reporting requirements on States or provide them with additional options. These proposed changes are summarized in units II.B.1 through II.B.9 of this preamble.

1. Harmonizing Report Due Dates

The NO_X SIP Call rule required the affected States to submit emissions inventory reports for a given ozone season to EPA by December 31 of the following year. The CERR requires similar but not identical reports from all States by the following June 1, five months later. The EPA believes that harmonizing these dates would be efficient for both States and EPA. We are proposing to move the June 1, reporting requirement to the previous December 31. The first reports due under this proposal would be for the year 2008 to be reported by December 31, 2009. We are soliciting comment on an alternative of requiring that point sources be reported on December 31 and other sources on June 1. This approach would eliminate the problem of States having to make two submissions for point sources within a 5-month period and would result in a more timely submission of the emissions information for point sources. A more timely submission would be particularly useful for point sources because point sources generally are the primary subject of control measures in SIPs. The later June 1 submission date for nonpoint sources and mobile sources would allow more time for estimating these emissions sources, which in some cases may require vehicle miles traveled or business activity data that are not available in time for a December 31 submission. In addition, estimating emissions of some types of nonpoint sources requires prior knowledge of emissions and activity levels at point sources of the same industrial type; therefore, it may make sense to stagger the submission deadlines for the different sources.

The EPA solicited comments on a similar provision in the CAIR supplemental proposal. Here, the EPA proposed to harmonize the dates for both the NO_X SIP Call and the CERR at 17 months but asked for comments on a 12 month due date. Several comments were received, all favoring harmonizing the report due date at 17 months. Nonetheless, EPA believes that shortening the reporting cycle to 12 months is possible and desirable. EPA's ultimate goal is to complete the NEI within 12 months of the end of a calendar year. This is consistent with recommendations made by external groups (e.g., NARSTO's Improving Emission Inventories for Effective Air Quality Management Across North America *http://www.cgenv.com/Narsto/EmissionInventory.html*). Meeting this goal will require a reporting due date even early than 12 months. However, since the current reporting due date for the NEI is 17 months, a phased approach with a due date of 12 months for the 2008 NEI and earlier due dates in subsequent cycles is appropriate. EPA is confident that States can meet report due dates of 12 months or earlier. To demonstrate this, EPA is currently working with 10 State and local agencies on the Rapid Inventory Development Pilot. Under this pilot project EPA has received 2004 emission estimates from half of the participating State and local agencies by the end of October 2005 (10 months after the end of the year being inventoried). EPA will issue a report on the results of this pilot study.

2. Accelerating Report Due Dates

The EPA believes that the public is best served by making environmental information available as soon as possible. Therefore, we are proposing that the reporting schedule be further accelerated for the triennial year 2011 and all following years by requiring that point sources be reported within 6 months from the end of the calendar year, i.e., by June 30 of the following year. Reporting on all other sources would be required within 12 months, i.e., by December 31 of the following year. There is precedent for requiring reporting of point source emissions data within 6 months. Beginning with the year 1979, States were required, under subpart Q, to report point source emissions data within 6 months. Moreover, we believe that modern web-based source reporting systems will be able to greatly shorten the time it takes States to get emissions reports from sources. We invite comment on alternative reporting schedules from 6 to 12 months for point sources and from 12 to 17 months for all other sources.

3. Reporting Biogenic Emissions

We are proposing to remove a requirement in the existing CERR for reporting annual and typical ozone season day biogenic emissions. Biogenic emissions are estimated by a computer model using meteorological and land use/land cover data as inputs. Because EPA can develop these data inputs directly without having them reported by State, local and Tribal agencies, we believe the requirement for reporting biogenic emissions serves no useful purpose. This change does not affect our expectation that biogenic emissions be appropriately considered in ozone and $PM_{2.5}$ attainment demonstrations.

We received a number of comments on this provision when it was made in the CAIR supplemental proposal. All of the comments were in favor of eliminating the biogenic emissions reporting requirement. The EPA is reproposing this change to allow for the maximum opportunity for public comment.

4. Reporting Emission Model Inputs

We are proposing a new provision which would allow States the option of providing emissions inventory estimation model inputs in lieu of actual emissions estimates, for source categories for which prior to the submission deadline EPA develops or adopts suitable emissions inventory estimation models and by guidance defines their necessary inputs. This provision would allow source reporting to take advantage of new emissions estimation tools for greater efficiency, although the States would continue to be required to provide inputs representative of their conditions. If States choose to use this option, EPA will run the emissions model(s) to calculate emissions and will enter the emissions data into the appropriate data base. We propose that this option would be available starting with the reports on 2005 emissions. Furthermore, we invite comment on whether States should be required to provide model inputs for source categories for which they have utilized a widely available emissions model, to improve the transparency of the emission estimates themselves and the overall utility of the submissions in meeting the objectives of the emissions reporting requirements. For example, such inputs would better allow EPA to project future emissions.

We received several comments on this provision in the CAIR supplemental proposal. Most of the comments were in favor of allowing the option of reporting

model inputs in lieu of the estimated emissions from the models. However, most of the commenters did not want the reporting of model inputs to become a reporting requirement. Therefore, EPA is reproposing this change to create a State option and inviting comment on making submission of inputs a requirement to allow for the maximum opportunity for public comment.

5. Reporting Summer Day Emissions

We are proposing to retain the requirement for reporting of summer day emissions from all sources (except biogenic sources) at 3-year intervals, but to restrict it to only States with ozone nonattainment areas or States covered by the NO_X SIP Call or CAIR. The NO_X SIP Call requires the reporting of only NO_X emissions for a typical summer day, while the CERR requires the reporting of all criteria pollutants. We propose to restrict the summer day emissions reporting requirement to VOC and NO_X emissions, but we invite comment on whether CO emissions should be required also.

We received several comments on this provision when it was made in the CAIR supplemental proposal. Two of the comments supported retaining the requirement that summer day emissions be reported as required by the CERR. Two of the comments supported EPA's proposed revision to the CERR requirement. One State commented that EPA should not require statewide reporting of summer day emissions, unless it could be demonstrated that these emissions contributed to nonattainment within the State or in other States. The EPA is reproposing this change to allow for the maximum opportunity for public comment.

6. Reporting Winter Work Week Day Emissions

We are proposing to delete the existing requirement that all States report emissions for a winter work week day. This requirement was originally aimed at tracking progress towards attainment of the CO NAAQS. We believe applying this requirement to all States is no longer warranted given that CO violations are currently observed in few areas. We believe we can work directly with the few remaining affected States to monitor efforts to attain the CO NAAQS without requiring formal submission of CO inventories.

We received several comments on this provision in the CAIR supplemental proposal. All of the comments were in favor of eliminating the requirement to report emissions for a winter work week day. The EPA is reproposing this change to allow for the maximum opportunity for public comment.

7. New Data Elements

We are proposing to add several required data elements to the existing rule. These are contact name, contact phone number, emission release point type, control status, emission type, and method accuracy description (MAD) codes.

The contact name and phone number are for the lead contact in the organization submitting the data and are needed to ensure that EPA knows who to contact if issues arise with a data submission.

The emission release point type is a code for the physical configuration of the emission release point (e.g., vertical stack, fugitive, etc.). It is needed to correctly model how emissions are released into the atmosphere.

The control status is a code that represents whether emissions reported are controlled or uncontrolled. It is needed to correctly project future emissions and to correctly evaluate the impact of emission control programs. While data elements related to control equipment are already required, they are not adequate since some control approaches do not involve physical equipment, for example low solvent coatings. We also invite comment on whether with this addition the current data elements that describe emissions control equipment type and efficiency are adequate. We believe it is important for States to report on the manner in which sources are currently controlled so that opportunities for developing control strategies and regulatory development can be assessed, but the existing data elements may not be adequate and appropriate for that purpose. The present data elements related to control measures are primary control efficiency, secondary control efficiency, control device type, and rule effectiveness for point sources; and total capture/control efficiency, rule effectiveness, and rule penetration for nonpoint sources and nonroad mobile sources.[3]

We received a few comments on this provision when it was made in the CAIR supplemental proposal. One commenter said that current data elements were not adequate to fully characterize control efficiencies but did not suggest any specific changes. Other commenters were concerned about reporting burden and opposed the addition of any further reporting requirements. The EPA is reproposing this change to allow for the maximum opportunity for public comment.

The emission type is a code describing the temporal period of emissions reported (e.g., annually, daily, etc.). It is needed to ensure that emissions estimates are used properly.

The method accuracy (MAD) codes are codes that provide information about geographic coordinates including the collection method, accuracy, and other descriptors. We are proposing adding the MAD codes to this rule because EPA's Latitude/Longitude Data Standard[4] requires their collection when latitude and longitude are collected. The MAD codes are horizontal collection method code, horizontal accuracy measure, horizontal reference datum code, reference point code, source map scale number, and coordinate data source code. The EPA believes that many States will be able to report these codes based on existing information. However, in the event that the information needed to report these codes is not available, States will not be required to do additional work since there is a code "don't know."

8. Identification of New Emissions Related Data Requirements

We invite comment on whether or not additional emissions related data should be required. Commenters may choose to discuss how the reporting of new or currently required data may improve the accuracy, consistency and reliability of emissions inventories. If new emissions related data requirements are identified by commenters, then EPA may choose to issue a supplemental proposal for these proposed amendments detailing specific requirements. The EPA urges commenters who wish to suggest other data elements to comment to that effect early in the 120-day comment period, so that EPA has the option of issuing the supplemental proposal while the 120-day comment period is still open.

9. Revisions to Specific Data Elements

The NO_X SIP Call rule and the CERR contain detailed lists of required data elements in addition to emissions, and each rule has its own set of definitions. The two sets of data elements overlap but are not identical. The NO_X SIP Call rule requires a few more data elements to be reported and defines some data

[3] Additional information on emissions data elements and the formats and valid codes presently in use for State reporting to EPA is available on the EPA Web site *http://www.epa.gov/ttn/chief/nif/index.html.*

[4] *Environmental Data Registry: Latitude/Longitude Standard.* 2000. U.S. Environmental Protection Agency. December 11, 2000. *http://oasspub.epa.gov/edr/edr_proc_qry.navigate?P_LIST_OPTION_CD=CSDIS&P_REG_AUTH_IDENTIFIER=1&P_DATA_IDENTIFIER=19939&P_VERSION=1.*

elements differently than the CERR. The EPA has reviewed both lists in light of more recent experiences and insight into the difficulty States face in collecting and submitting these data elements and their utility to EPA, other States, and other users. We are proposing to combine the separate lists of required elements into a single new list of required data elements. A few data elements from the NO_X SIP Call are proposed to be eliminated. The NO_X SIP Call data elements that we are proposing to eliminate are: "Area Designation," "Federal ID code (plant)," "Federal ID code (point)," "Federal ID code (process)," "Federal ID code (stack number)," "Maximum design rate," "Work weekday emissions," "Secondary control efficiency," "Source of fuel heat content data," "Source of activity/throughput data," "Source of emission factor" and "Source of emissions data." We propose that these relatively minor changes become applicable starting with the first required emissions reports following the promulgation of the final amendments.

There are a number of data elements required in the proposed amendments on which we invite comment as to whether they should be dropped in the final amendments. These are heat content (fuel), ash content (fuel), sulfur content (fuel) for fuels other than coal, activity/throughput, hours per day in operation, days per week in operation, weeks per year in operation, and start time in the day. These data elements have been carried forward from emissions reporting systems dating back many years. We believe it is appropriate to take comment on their current usefulness and sufficiency.

We received several comments in response to this invitation for comments when it was made in the CAIR supplemental proposal. In general, the comments opposed eliminating these as required data elements. Therefore, EPA is reproposing this change to allow for the maximum opportunity for public comment.

At present, States are required to report three particular data elements for point source stacks: Stack diameter, exit gas velocity, and exit gas flow rate. This is a redundant requirement since any one of these can be calculated from the other two. We invite comment on which if any of these data elements to drop from the required list. Our preference would be to collect the data element that is most closely tied to an actual operating measurement. Alternatively, we may allow States to report either exit gas flow or exit gas velocity, at their option.

We received several comments on this provision when it was made in the CAIR supplemental proposal. In general, the comments favored the elimination of one of these as a required data element. The EPA is reproposing this change to allow for the maximum opportunity for public comment.

Finally, we propose to modify 40 CFR 51.35 to provide that if States obtain one-third of their necessary emissions estimates from point sources and/or prepare one-third of their nonpoint or mobile source emissions estimates each year on a rolling basis, they should submit their data as a single package on the required every 3rd year submission date. The current requirement allows States to report these partial emissions estimates annually as they are completed. Our proposal requires that States accumulate all three years of work and then make a single data submission by the due date for the trienniel emission inventory year.

We received two comments on this provision when it was made in the CAIR supplemental proposal. The comments indicated that additional information is needed to better understand why EPA believes that this change is beneficial. The EPA believes that a single submission would allow States to correct and/or update data prior to submitting it to EPA thereby facilitating a more consistant data set. A single submission would also make it more efficient for EPA to quality assure the complete data set rather than doing it on a piecemeal basis. There would also be increased efficiencies in resolving any identified discrepancies with the States. Therefore, EPA is reproposing this change to allow for the maximum opportunity for public comment.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, it has been determined that this regulatory action is a "significant regulatory action" because it raises novel legal or policy issues. As such, this action was submitted to OMB for Executive Order 12866 review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the proposed amendments have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection request (ICR) document prepared by EPA has been assigned EPA ICR number 2170.01.

The information collection requirements in the proposed amendments are based on the existing Emission Inventory Reporting Requirements in 40 CFR part 51, subparts A and G. In general, these provisions require each State to compile a statewide inventory of emissions of certain criteria pollutants at least every 3 years for all point, nonpoint, and mobile sources. The information collection requirements for the existing inventory reporting requirements have been approved by OMB under control number 2060–0088.

The information collection requirements in the proposed amendments are mandatory for all States and territories (excluding tribal governments). These requirements are authorized by section 110(a) of the CAA. The reported emissions data are used by EPA to develop and evaluate State, regional, and national control strategies; to assess and analyze trends in criteria pollutant emissions; to identify emission and control technology research priorities; and to assess the impact of new or modified sources within a geographic area. The emission inventory data are also used by States to develop, evaluate, and revise their SIP.

The proposed amendments would add new reporting requirements and would combine these new requirements with existing requirements from the CAIR, CERR, NO_X SIP Call, and the

Acid Rain Program. Each of these four existing rules has an approved ICR. The current ICRs are: For the CAIR, ICR No. 2152.01; for the CERR, ICR No. 0916.10; for the NO_X SIP Call, ICR No. 1857; and for the Acid Rain Program, ICR No. 1633.13.

The proposed changes would reduce the information collection burden for each of the 104 respondents by about 13 labor hours per year from current levels. The annual average reporting burden for this collection (averaged over the first 3 years of this ICR) is estimated to decrease by a total of 1,373 labor hours per year with a decrease in costs of $47,450. From the perspective of the sources reporting to the States, EPA does not believe that there will be any change in reporting burden resulting from AERR because the same universe of sources will be required to report to the States. No capital/startup costs or operation and maintenance costs for monitoring equipment are attributable to the proposed amendments. The only costs associated with the proposed amendments are labor hours associated with collection, management, and reporting of the data through existing systems.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 51 are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for the proposed rule, which includes this ICR, under Docket ID number OAR–2004–0489. Submit any comments related to the ICR for these proposed amendments to EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after January 3, 2006, a comment to OMB is best assured of having its full effect if OMB receives it by February 2, 2006. The final amendments will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's proposed amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration; (2) a government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. This action primarily impacts State and local agencies and does not regulate small entities. The proposed amendments would provide States with additional flexibility in how they collect and report emissions data. Rather than entering their emissions data directly, State and local agencies may choose to report the inputs to certain emissions models. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. No significant costs are attributable to the proposed amendments; in fact, the proposed amendments are estimated to decrease costs associated with emissions inventory reporting. Thus, the proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the proposed amendments do not significantly or uniquely affect small governments because they contain no requirements

that apply to such governments or impose obligations upon them. Therefore, the proposed amendments are not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The proposed amendments do not have federalism implications. They would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The proposed amendments do not have Tribal implications. They would not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. The Tribal Authority Rule means that Tribes cannot be required to report their emissions to us. Thus, Executive Order 13175 does not apply to the proposed amendments.

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

Executive Order 13045: (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The proposed amendments are not subject to Executive Order 13045 because they are not based on health or safety risks.

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

These proposed amendments are not a "significant energy action" as defined in Executive Order 13211, (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we believe that the proposed amendments are not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 112(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by one or more voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 51

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: December 22, 2005.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 51 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

2. Subpart A is revised to read as follows:

Subpart A—Air Emissions Reporting Requirements

General Information For Inventory Preparers

Sec.
51.1 Who is responsible for actions described in this subpart?
51.5 What tools are available to help prepare and report emissions data?
51.10 How does my State report emissions that are required by the NO_X SIP Call and the Clean Air Interstate Rule?

Specific Reporting Requirements

51.15 What data does my State need to report to EPA?
51.20 What are the emission thresholds that separate point and nonpoint sources?
51.25 What geographic area must my State's inventory cover?
51.30 When does my State report which emissions data to EPA?
51.35 How can my State equalize the emissions inventory effort from year-to-year?
51.40 In what form and format should my State report the data to EPA?
51.45 Where should my State report the data?
51.50 What definitions apply to this subpart?

Tables to Subpart A of Part 51

Table 1 to Subpart A of Part 51. Emission Thresholds by Pollutant (tpy[1]) for Treatment of Point Sources as Type A Under 40 CFR 51.30
Table 2a to Subpart A of Part 51. Data Elements For Reporting on Emissions from Point Sources, Where Required by 40 CFR 51.30
Table 2b to Subpart A of Part 51. Data Elements For Reporting on Emissions from Nonpoint Sources and Nonroad Mobile Sources, Where Required by 40 CFR 51.30

Table 2c to Subpart A of Part 51. Data Elements For Reporting on Emissions from Onroad Mobile Sources, Where Required by 40 CFR 51.30

Subpart A—Air Emissions Reporting Requirements General Information for Inventory Preparers

§ 51.1 Who is responsible for actions described in this subpart?

States must inventory emission sources located on non-tribal lands and report this information to EPA.

§ 51.5 What tools are available to help prepare and report emissions data?

We urge your State to use estimation procedures described in documents from the Emission Inventory Improvement Program (EIIP). These procedures are standardized and ranked according to relative uncertainty for each emission estimating technique. Using this guidance will enable others to use your State's data and evaluate its quality and consistency with other data.

§ 51.10 How does my State report emissions that are required by the NO_X SIP Call and the Clean Air Interstate Rule?

The District of Columbia and States that are subject to the NO_X SIP Call (§ 51.121 of this part) are subject to the emissions reporting provisions of § 51.122 of this part. The District of Columbia and States that are subject to the Clean Air Interstate Rule are subject to the emissions reporting provisions of § 51.125 of this part. This subpart A incorporates the pollutants, source, time periods, and required data elements for both of these reporting requirements.

Specific Reporting Requirements

§ 51.15 What data does my State need to report to EPA?

(a) Pollutants. Report actual emissions of the following (see Definitions in § 51.50 for precise definitions as required):

(1) Required pollutants for triennial reports of annual (12-month) emissions for all sources and every-year reports of annual emissions from Type A sources:

(i) Sulfur dioxide (SO_2).

(ii) Volatile organic compounds (VOC).

(iii) Nitrogen oxides (NO_X).

(iv) Carbon monoxide (CO).

(v) Lead and lead compounds.

(vi) Primary $PM_{2.5}$. Emissions of filterable, condensible, and total $PM_{2.5}$ should be reported, if all are applicable to the source type.

(vii) Primary PM_{10}. Emissions of filterable, condensible, and total PM_{10} should be reported, if all are applicable to the source type.

(viii) Ammonia (NH_3).

(2) Required pollutants for every-year reporting of annual (12-month) emissions for sources controlled to meet the requirements of § 51.123 of this part: NO_X.

(3) Required pollutants for every-year reporting of annual (12-month) emissions of sources controlled to meet the requirements of § 51.124 of this part: SO_2.

(4) Required pollutants for all reports of ozone season (5 months) emissions: NO_X.

(5) Required pollutants for triennial reports of summer day emissions:

(i) NO_X.

(ii) VOC.

(6) Required pollutants for every-year reports of summer day emissions: NO_X.

(7) A State may at its option include in its emissions inventory reports estimates of emissions for additional pollutants such as other pollutants listed in paragraph (a)(1) of this section or hazardous air pollutants.

(b) Sources. Emissions should be reported from the following sources in all parts of the State, excluding sources located on Tribal lands:

(1) Point.

(2) Nonpoint.

(3) Onroad mobile.

(4) Nonroad mobile.

(c) Supporting information. You must report the data elements in Tables 2a through 2c to subpart A of this part. We may ask you for other data on a voluntary basis to meet special purposes.

(d) Confidential data. We do not consider the data in Tables 2a through 2c to subpart A of this part confidential, but some States limit release of this type of data. Any data that you submit to EPA under this subpart will be considered in the public domain and cannot be treated as confidential. If Federal and State requirements are inconsistent, consult your EPA Regional Office for a final reconciliation.

(e) Option to Submit Inputs to Emission Inventory Estimation Models in Lieu of Emission Estimates. For a given reporting year, EPA may allow States to submit comprehensive input values for models capable of estimating emissions from a certain source type on a national scale, in lieu of submitting the emission estimates otherwise required by this subpart.

§ 51.20 What are the emission thresholds that separate point and nonpoint sources?

(a) All anthropogenic stationary sources must be included in your inventory as either point or nonpoint sources.

(b) Sources which meet the definition of point source in this subpart must be reported as point sources. All pollutants specified in § 51.15(a) of this section must be reported for point sources, not just the pollutant(s) which qualify the source as a point source.

(c) If your State has lower emission reporting thresholds for point sources than paragraph (b) of this section, then you may use these in reporting your emissions to EPA.

(d) All stationary sources that are not subject to reporting as point sources must be reported as nonpoint sources. This includes wild fires and prescribed fires. Episodic wind-generated particulate matter (PM) emissions from sources that are not major sources may be excluded, for example dust lifted by high winds from natural or tilled soil. Emissions of nonpoint sources may be aggregated to the county level, but must be separated and identified by source classification code (SCC). Nonpoint source categories or emission events reasonably estimated by the State to represent a *de minimis* percentage of total county and State emissions of a given pollutant may be omitted.

§ 51.25 What geographic area must my State's inventory cover?

Because of the regional nature of these pollutants, your State's inventory must be statewide, regardless of any area's attainment status.

§ 51.30 When does my State report which emissions data to EPA?

All States are required to report two basic types of emission inventories to EPA: Every-year Cycle Inventory; and Three-year Cycle Inventory. The sources and pollutants to be reported vary among States.

(a) Every-year cycle. See Tables 2a, 2b, and 2c to subpart A of this part for the specific data elements to report every year.

(1) All States are required to report every year the annual (12-month) emissions of all pollutants listed in § 51.15(a)(1) from Type A (large) point sources, as defined in Table 1 to subpart A of this part. The first every-year cycle inventory will be for the year 2008 and must be submitted to EPA within 12 months, i.e., by December 31, 2009. The same 12-month reporting sequence will apply for the every-year cycle inventories for the years 2009 and 2010, i.e., these inventories must be reported to EPA by December 31, 2010 and December 31, 2011, respectively. Beginning with the year 2011 and for all subsequent every-year cycle inventories, the inventories will be due 6 months following the end of the reporting year, i.e., the 2011 inventory must be reported to EPA by June 30, 2012.

(2) States subject to §§ 51.123 and 51.125 of this part are required to report every year the annual (12-month) emissions of NO_X from any point, nonpoint, onroad mobile, or nonroad mobile source for which the State specified control measures in its State Implementation Plan (SIP) submission under § 51.123 of this part. This requirement begins with the 2009 inventory year. This requirement does not apply to any State subject to § 51.123 of this part solely because of its contribution to ozone nonattainment in another State.

(3) States subject to §§ 51.124 and 51.125 of this part are required to report every year the annual (12-month) emissions of SO_2 from any point, nonpoint, onroad mobile, or nonroad mobile source for which the State specified control measures in its SIP submission under § 51.124 of this part. This requirement begins with the 2009 inventory year.

(4) States subject to §§ 51.123 and 51.125 of this part are required to report every year the ozone season emissions of NO_X and summer day emissions of NO_X from any point, nonpoint, onroad mobile, or nonroad mobile source for which the State specified control measures in its SIP submission under § 51.123 of this part. This requirement begins with the 2009 inventory year. This requirement does not apply to any State subject to § 51.123 of this part solely because of its contribution to $PM_{2.5}$ nonattainment in another State.

(5) States subject to the emission reporting requirements of § 51.122 of this part (the NO_X SIP Call) are required to report every year the ozone season emissions of NO_X and summer day emissions of NO_X from any point, nonpoint, onroad mobile, or nonroad mobile source for which the State specified control measures in its SIP submission under § 51.121(g) of this part. This requirement begins with the inventory year prior to the year in which compliance with the NO_X SIP Call requirements is first required.

(6) If sources report SO_2 and NO_X emissions data to EPA in a given year pursuant to a trading program approved under § 51.123(o) or § 51.124(o) of this part or pursuant to the monitoring and reporting requirements of 40 CFR part 75, then the State need not provide annual reporting of the pollutants to EPA for such sources. If SO_2 and NO_X are the only pollutants required to be reported for the source for the given calendar year and emissions period (annual, ozone season, or summer day), all data elements for the source may be omitted from the State's emissions report for that period. We will make both the raw data submitted by sources to the trading programs and summary data available to any State that chooses this option.

(7) In years which are reporting years under the 3-year cycle, the reporting required by the 3-year cycle satisfies the requirements of this paragraph.

(b) Three-year cycle. See Tables 2a, 2b and 2c to subpart A of this part for the specific data elements that must be reported triennially.

(1) All States are required to report for every 3rd year the annual (12-month) emissions of all pollutants listed in § 51.15(a)(1) from all point sources, nonpoint sources, onroad mobile sources, and nonroad mobile sources. The first 3-year cycle inventory will be for the year 2008 and must be submitted to us within 12 months, i.e., by December 31, 2009. Subsequent 3-year cycle (2011 and following) inventories will be due as required in paragraphs (b)(1)(i) and (ii) of this section:

(i) Point Sources—due six months after the end of the reporting year, i.e., the point source component for the 3-year cycle inventory year 2011 must be reported to EPA by June 30, 2012.

(ii) Nonpoint sources, onroad mobile sources, and nonroad mobile sources—due twelve months after the end of the reporting year, i.e., the nonpoint sources, onroad mobile sources, and nonroad mobile sources components for the 3-year cycle inventory year 2011 must be reported to EPA by December 31, 2012.

(2) States subject to § 51.122 of this part must report ozone season emissions and summer day emissions of NO_X from all point sources, nonpoint sources, onroad mobile sources, and nonroad mobile sources. The first 3-year cycle inventory will be for the year 2008 and must be submitted to EPA within 12 months, i.e., by December 31, 2009. Subsequent 3-year cycle inventories will be due as specified under paragraph (b)(1) of this section.

(3) States subject to §§ 51.123 and 51.125 of this part must report ozone season emissions of NO_X and summer day emissions of VOC and NO_X from all point sources, nonpoint sources, onroad mobile sources, and nonroad mobile sources. The first 3-year cycle inventory will be for the year 2008 and must be submitted to us within 12 months, i.e., by December 31, 2009. Subsequent 3-year cycle inventories will be due as specified under paragraph (b)(1) of this section. This requirement does not apply to any State subject to § 51.123 of this part solely because of its contribution to $PM_{2.5}$ nonattainment in another State.

(4) Any State with an area for which EPA has made an 8-hour ozone nonattainment designation finding (regardless of whether that finding has reached its effective date) must report summer day emissions of VOC and NO_X from all point sources, nonpoint sources, onroad mobile sources, and nonroad mobile sources. The first 3-year cycle inventory will be for the year 2008 and must be submitted to EPA within 12 months, i.e., by December 31, 2009. Subsequent 3-year cycle inventories will be due as specified under paragraph (b)(1) of this section.

§ 51.35 How can my State equalize the emissions inventory effort from year to year?

(a) Compiling a 3-year cycle inventory means more effort every 3 years. As an option, your State may ease this workload spike by using the following approach:

(1) Each year, collect and report data for all Type A (large) point sources (this is required for all Type A point sources).

(2) Each year, collect data for one-third of your nonType A point sources. Collect data for a different third of these sources each year so that data has been collected for all of the nonType A point sources by the end of each 3-year cycle. You must save 3 years of data and then report all of the nonType A point sources on the 3-year cycle due date.

(3) Each year, collect data for one-third of the nonpoint, nonroad mobile, and onroad mobile sources. You must save 3 years of data and then report all of these data on the 3-year cycle due date.

(b) For the sources described in paragraph (a) of this section, your State will therefore have data from 3 successive years at any given time, rather than from the single year in which it is compiled.

(c) If your State chooses the method of inventorying one-third of your smaller point sources and 3-year cycle nonpoint, nonroad mobile, onroad mobile sources each year, your State must compile each year of the 3-year period identically. For example, if a process hasn't changed for a source category or individual plant, your State must use the same emission factors to calculate emissions for each year of the 3-year period. If your State has revised emission factors during the 3 years for a process that hasn't changed, resubmit previous years' data using the revised factor. If your State uses models to estimate emissions, you must make sure that the model is the same for all 3 years.

(d) If your State needs a new reference year emission inventory for a selected

pollutant, your State cannot use these optional reporting frequencies for the new reference year.

(e) If your State is a NO_X SIP Call State, you cannot use these optional reporting frequencies for NO_X SIP Call reporting.

§ 51.40 In what form and format should my State report the data to EPA?

You must report your emission inventory data to us in electronic form. We support specific electronic data reporting formats and you are required to report your data in a format consistent with these. The term format encompasses the definition of one or more specific data fields for each of the data elements listed in Tables 2a, 2b, and 2c to subpart A of this part; allowed code values for categorical data fields; transmittal information; and data table relational structure. Because electronic reporting technology continually changes, contact the EPA Emission Inventory Group (EIG) for the latest specific formats. You can find information on the current formats at the following Internet address: *http://www.epa.gov/ttn/chief/nif/index.html.* You may also call the air emissions contact in your EPA Regional Office or our Info CHIEF help desk at (919) 541–1000 or e-mail to *info.chief@epa.gov.*

§ 51.45 Where should my State report the data?

(a) Your State submits or reports data by providing it directly to EPA.

(b) The latest information on data reporting procedures is available at the following Internet address: *http://www.epa.gov/ttn/chief.* You may also call our Info CHIEF help desk at (919) 541–1000 or e-mail to *info.chief@epa.gov.*

§ 51.50 What definitions apply to this subpart?

Terms used in this subpart as defined in this section.

Activity throughput means a measurable factor or parameter that relates directly or indirectly to the emissions of an air pollution source during the period for which emissions are reported. Depending on the type of source category, activity information may refer to the amount of fuel combusted, raw material processed, product manufactured, or material handled or processed. It may also refer to population, employment, or number of units. Activity information is typically the value that is multiplied against an emission factor to generate an emissions estimate.

Annual emissions means actual emissions for a plant, point, or process—measured or calculated that represent a calendar year.

Ash content means inert residual portion of a fuel.

Contact name means the complete name of the contact person, including first name, middle name or initial, and surname. Lead contact for the organization transmitting the data set.

Contact phone number means the phone number for the contact name.

Control device type means the name of the type of control device (e.g., wet scrubber, flaring, or process change).

Control status means an indication of whether reported emissions are controlled or uncontrolled.

Day/wk in operations means days per week that the emitting process operates averaged over the inventory period.

Design capacity means a measure of the size of a point source, based on the reported maximum continuous throughput or output capacity of the unit. For a boiler, design capacity is based on the reported maximum continuous steam flow, usually in units of million BTU per hour.

Emission factor means the ratio relating emissions of a specific pollutant to an activity or material throughput level.

Emission release point type means the code for physical configuration of the release point.

Emission type means the code describing temporal designation of emissions reported, i.e., Entire Period, Average Weekday, etc.

Exit gas flow rate means the numeric value of stack gas's flow rate.

Exit gas temperature means the numeric value of an exit gas stream's temperature.

Exit gas velocity means the numeric value of an exit gas stream's velocity.

Facility ID codes means the unique codes for a plant or facility treated as a point source, containing one or more pollutant-emitting units. The EPA's reporting format for a given reporting year may require several facility ID codes to ensure proper matching between data bases, e.g., the State's own current and most recent facility ID codes, the EPA-assigned facility ID codes, and the ORIS (Department of Energy) ID code if applicable.

Fall throughput (percent) means part of the throughput for the three Fall months (September, October, November). This expresses part of the annual activity information based on four seasons—typically spring, summer, fall, and winter. It can be a percentage of the annual activity (e.g., production in summer is 40 percent of the year's production) or units of the activity (e.g., out of 600 units produced, spring = 150 units, summer = 250 units, fall = 150 units, and winter = 50 units).

FIPS Code. Federal Information Placement System (FIPS) is the system of unique numeric codes the government developed to identify States, counties and parishes for the entire United States, Puerto Rico, and Guam.

Heat content means the amount of thermal heat energy in a solid, liquid, or gaseous fuel, averaged over the period for which emissions are reported. Fuel heat content is typically expressed in units of Btu/lb of fuel, Btu/gal of fuel, joules/kg of fuel, etc.

Hr/day in operations means the hours per day that the emitting process operates averaged over the inventory period.

Inventory end date means the last day of the inventory period.

Inventory start date means the first day of the inventory period.

Inventory type means a code indicating whether the inventory submission includes emissions of hazardous air pollutants.

Inventory year means the calendar year for which you calculated emissions estimates.

Lead (Pb) means lead as defined in 40 CFR 50.12. Lead should be reported as elemental lead and its compounds.

Maximum nameplate capacity means a measure of the size of a generator which is put on the unit's nameplate by the manufacturer. The data element is reported in megawatts or kilowatts.

Method accuracy description (MAD) codes means a set of six codes used to define the accuracy of latitude/longitude data for point sources. The six codes and their definitions are:

(1) *Coordinate Data Source Code:* The code that represents the party responsible for providing the latitude/longitude.

(2) *Horizontal Collection Method Code:* Method used to determine the latitude/longitude coordinates for a point on the earth.

(3) *Horizontal Accuracy Measure:* The measure of accuracy (in meters) of the latitude/longitude coordinates.

(4) *Horizontal Reference Datum Code:* Code that represents the reference datum used to determine the latitude/longitude coordinates.

(5) *Reference Point Code:* The code that represents the place for which geographic coordinates were established. Code value should be 106 (e.g., point where substance is released).

(6) *Source Map Scale Number:* The number that represents the proportional distance on the ground for one unit of measure on the map or photo.

Mobile source means a motor vehicle, nonroad engine or nonroad vehicle. A

motor vehicle is any self-propelled vehicle used to carry people or property on a street or highway. A *nonroad engine* is an internal combustion engine (including fuel system) that is not used in a motor vehicle or vehicle only used for competition, or that is not affected by sections 111 or 202 of the CAA. A *nonroad vehicle* is a vehicle that is run by a nonroad engine and that is not a motor vehicle or a vehicle only used for competition.

Nitrogen oxides (*NO_X*) means nitrogen oxides (NO_X) as defined in 40 CFR 60.2 as all oxides of nitrogen except N_2O. Nitrogen oxides should be reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

Nonpoint sources. Nonpoint sources collectively represent individual sources that have not been inventoried as specific point or mobile sources. These individual sources treated collectively as nonpoint sources are typically too small, numerous, or difficult to inventory using the methods for the other classes of sources.

Ozone Season means the period May 1 through September 30 of a year.

Particulate Matter (PM). Particulate matter is a criteria air pollutant. For the purpose of this subpart, the following definitions apply:

(1) *Filterable $PM_{2.5}$* or *Filterable PM_{10}*: Particles that are directly emitted by a source as a solid or liquid at stack or release conditions and captured on the filter of a stack test train. Filterable $PM_{2.5}$ is particulate matter with an aerodynamic diameter equal to or less than 2.5 micrometers. Filterable PM_{10} is particulate matter with an aerodynamic diameter equal to or less than 10 micrometers.

(2) *Condensible PM:* Material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid PM immediately after discharge from the stack. Note that all condensible PM, if present from a source, is typically in the $PM_{2.5}$ size fraction, and therefore all of it is a component of both primary $PM_{2.5}$ and primary PM_{10}.

(3) *Primary $PM_{2.5}$*: The sum of filterable $PM_{2.5}$ and condensible PM.

(4) *Primary PM_{10}*: The sum of filterable PM_{10} and condensible PM.

(5) *Secondary PM:* Particles that form or grow in mass through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM is usually formed at some distance downwind from the source. Secondary PM should NOT be reported in the emission inventory and is NOT covered by this subpart.

Process classification code (PCC) means a process-level code that describes the equipment or operation which is emitting pollutants. This code is being considered as a replacement for the SCC.

Physical address means the street address of a facility. This is the address of the location where the emissions occur; not, for example, the corporate headquarters.

Point source. For reporting for the years 2008 and following, point sources are large, stationary (non-mobile), identifiable sources of emissions that release pollutants into the atmosphere. As used in this subpart, a point source is a facility that is a major source under section 302 or part D of title I of the CAA. Emissions of hazardous air pollutants are not considered in determining whether a source is a point source under this subpart. For reporting for the years before 2008, point sources are large, stationary (non-mobile), identifiable sources of emissions that release pollutants into the atmosphere. As used in this subpart, a point source is a facility that annually emits more than a "threshold" value. The minimum point source reporting thresholds by pollutant (in tons per year of actual emissions) are:

Pollutant	Annual cycle (type A sources)	Three-year cycle	
		Type B sources [1]	NAA [2]
1. SO_X	≥2500	≥100	≥100
2. VOC	≥250	≥100	O_3 (moderate) ≥100
3. VOC			O_3 (serious) ≥50
4. VOC			O_3 (severe) ≥25
5. VOC			O_3 (extreme) ≥10
6. NO_X	≥2500	≥100	≥100
7. CO	≥2500	≥1000	O_3 (all areas) ≥100
8. CO			CO (all areas) ≥100
9. Pb		≥5	≥5
10. PM_{10}	≥250	≥100	PM_{10} (moderate) ≥100
11. PM_{10}			PM_{10} (serious) ≥70
12. $PM_{2.5}$	≥250	≥100	≥100
13. NH_3	≥250	≥100	≥100

[1] Type A sources are a subset of the Type B sources and are the larger emitting sources by pollutant.
[2] NAA = Nonattainment Area. Special point source reporting thresholds apply for certain pollutants by type of nonattainment area. The pollutants by nonattainment area are: Ozone: VOC, NO_X, CO; CO; CO; PM_{10}: PM_{10}.

Pollutant code means a unique code for each reported pollutant assigned by the reporting format specified by EPA for each reporting year.

Primary capture and control efficiencies (percent) means two values indicating the emissions capture efficiency and the emission reduction efficiency of a primary control device. Capture and control efficiencies are usually expressed as a percentage or in tenths.

Process ID code means a unique code for the process generating the emissions, typically a description of a process.

Roadway class means a classification system developed by the Federal Highway Administration that defines all public roadways as to type based on land use and physical characteristics of the roadway.

Rule effectiveness (RE) means how well a regulatory program achieves all possible emissions reductions. This rating reflects the assumption that controls typically are not 100 percent effective because of equipment downtime, upsets, decreases in control efficiencies, and other deficiencies in emission estimates. Rule effectiveness adjusts the control efficiency.

Rule penetration means the percentage of a nonpoint source category covered by an applicable regulation.

SCC means source classification code, a process-level code that describes the equipment and/or operation which is emitting pollutants.

SIC/NAICS means Standard Industrial Classification code/North American Industry Classification System code. The NAICS codes are U.S. Department of Commerce's codes for businesses by products or services and have replaced SIC codes. The NAICS codes must be used exclusively beginning with the 2006 emission inventory year.

Site name means the name of the facility.

Spring throughput (percent) means part of throughput or activity for the three Spring months (March, April, May). See the definition of Fall Throughput.

Stack diameter means a stack's inner physical diameter.

Stack height means a stack's physical height above the surrounding terrain.

Stack ID code means a unique code for the point where emissions from one or more processes release into the atmosphere.

Start time (hour) means Start time (if available) that was applicable and used for calculations of emissions estimates.

Sulfur content means the sulfur content of a fuel, usually expressed as percent by weight.

Summer day emissions means an average day's emissions for a typical summer day with conditions critical to ozone attainment planning. The State will select the particular month(s) in summer and the day(s) in the week to be represented. The selection of conditions should be coordinated with the conditions assumed in the development of reasonable further progress plans, rate of progress plans and demonstrations, and/or emissions budgets for transportation conformity, to allow comparability of daily emission estimates.

Summer throughput (percent) means part of throughput or activity for the three Summer months (June, July, August). See the definition of Fall Throughput.

Total capture and control efficiency (percent) means the net emission reduction efficiency of all emissions collection devices.

Type A source means large point sources with actual annual emissions greater than or equal to any of the emission thresholds listed in Table 1 to subpart A of this part for Type A sources. If a source is a Type A source for any pollutant listed in Table 1, then the emissions for all Table 1 pollutants must be reported for that source.

Unit ID code means a unique code for the unit of generation of emissions, typically a physical piece or closely related set of equipment. The EPA's reporting format for a given reporting year may require multiple unit ID codes to ensure proper matching between data bases, e.g., the State's own current and most recent unit ID codes, the EPA-assigned unit ID codes if any, and the ORIS (Department of Energy) ID code if applicable.

VMT by SCC means vehicle miles traveled disaggregated to the SCC level, i.e., reflecting combinations of vehicle type and roadway class. Vehicle miles traveled expresses vehicle activity and is used with emission factors. The emission factors are usually expressed in terms of grams per mile of travel. Because VMT does not correlate directly to emissions that occur while the vehicle isn't moving, these nonmoving emissions are incorporated into the emission factors in EPA's MOBILE Model.

VOC means volatile organic compounds. The EPA's regulatory definition of VOC is in 40 CFR 51.100.

Winter throughput (percent) means part of throughput or activity for the three Winter months (December, January, February, all from the same year, e.g., Winter 2005 = January 2005 + February, 2005 + December 2005). See the definition of Fall throughput.

Wk/yr in operation means weeks per year that the emitting process operates.

X stack coordinate (longitude) means an object's east-west geographical coordinate.

Y stack coordinate (latitude) means an object's north-south geographical coordinate.

Tables to Subpart A of Part 51

TABLE 1 TO SUBPART A OF PART 51.—EMISSION THRESHOLDS BY POLLUTANT (TPY [1]) FOR TREATMENT OF POINT SOURCES AS TYPE A UNDER 40 CFR 51.30

Pollutant	Emissions threshold for type A treatment
1. SO_2	≥2500.
2. VOC	≥250.
3. NO_X	≥2500.
4. CO	≥2500.
5. Pb	Does not determine Type A status.
6. PM_{10}	≥250.
7. $PM_{2.5}$	≥250.
8. NH_3 [2]	≥250.

[1] tpy = Tons per year of actual emissions.

[2] Ammonia threshold applies only in areas where ammonia emissions are a factor in determining whether a source is a major source, i.e., where ammonia is considered a significant precursor of $PM_{2.5}$.

TABLE 2A TO SUBPART A OF PART 51.—DATA ELEMENTS FOR REPORTING ON EMISSIONS FROM POINT SOURCES, WHERE REQUIRED BY 40 CFR 51.30

Data elements	Every-year reporting	Three-year reporting
1. Inventory year	✔	✔
2. Inventory start date	✔	✔
3. Inventory end date	✔	✔
4. Inventory type	✔	✔
5. Contact name	✔	✔
6. Contact phone number	✔	✔
7. FIPS code	✔	✔
8. Facility ID codes	✔	✔
9. Unit ID code	✔	✔
10. Process ID code	✔	✔
11. Stack ID code	✔	✔
12. Site name	✔	✔
13. Physical address	✔	✔
14. SCC or PCC	✔	✔
15. Heat content (fuel) (annual average)	✔	✔
16. Heat content (fuel) (ozone season, if applicable)	✔	✔
17. Ash content (fuel) (annual average)	✔	✔
18. Sulfur content (fuel) (annual average)	✔	✔

TABLE 2A TO SUBPART A OF PART 51.—DATA ELEMENTS FOR REPORTING ON EMISSIONS FROM POINT SOURCES, WHERE REQUIRED BY 40 CFR 51.30—Continued

Data elements	Every-year reporting	Three-year reporting
19. Pollutant code	✔	✔
20. Activity/throughput (for each period reported)	✔	✔
21. Summer day emissions (if applicable)	✔	✔
22. Ozone season emissions (if applicable)	✔	✔
23. Annual emissions	✔	✔
24. Emission factor	✔	✔
25. Winter throughput (percent)	✔	✔
26. Spring throughput (percent)	✔	✔
27. Summer throughput (percent)	✔	✔
28. Fall throughput (percent)	✔	✔
29. Hr/day in operation	✔	✔
30. Start time (hour)	✔	✔
31. Day/wk in operation	✔	✔
32. Wk/yr in operation	✔	✔
33. X stack coordinate (longitude)		✔
34. Y stack coordinate (latitude)		✔
35. Method accuracy description (MAD) code		✔
36. Stack height		✔
37. Stack diameter		✔
38. Exit gas temperature		✔
39. Exit gas velocity		✔
40. Exit gas flow rate		✔
41. SIC/NAICS and at the facility and unit levels		✔
42. Design capacity (including boiler capacity if applicable)		✔
43. Maximum generator nameplate capacity		✔
44. Primary capture and control efficiencies (percent)		✔
45. Total capture and control efficiency (percent)		✔
46. Control device type		✔
47. Control status		✔
48. Emission type		✔
49. Emission release point type		✔
50. Rule effectiveness (percent)		✔

TABLE 2B TO SUBPART A OF PART 51.—DATA ELEMENTS FOR REPORTING ON EMISSIONS FROM NONPOINT SOURCES AND NONROAD MOBILE SOURCES, WHERE REQUIRED BY 40 CFR 51.30

Data elements	Every-year reporting	Three-year reporting
1. Inventory year	✔	✔
2. Inventory start date	✔	✔
3. Inventory end date	✔	✔
4. Inventory type	✔	✔
5. Contact name	✔	✔
6. Contact phone number	✔	✔
7. FIPS code	✔	✔
8. SCC or PCC	✔	✔
9. Emission factor	✔	✔
10. Activity/throughput level (for each period reported)	✔	✔
11. Total capture/control efficiency (percent)	✔	✔
12. Rule effectiveness (percent)	✔	✔
13. Rule penetration (percent)	✔	✔
14. Pollutant code	✔	✔
15. Ozone season emissions (if applicable)	✔	✔
16. Summer day emissions (if applicable)	✔	✔
17. Annual emissions	✔	✔
18. Winter throughput (percent)	✔	✔
19. Spring throughput (percent)	✔	✔
20. Summer throughput (percent)	✔	✔
21. Fall throughput (percent)	✔	✔
22. Hrs/day in operation	✔	✔
23. Days/wk in operation	✔	✔
24. Wks/yr in operation	✔	✔

TABLE 2C.—DATA ELEMENTS FOR REPORTING ON EMISSIONS FROM ONROAD MOBILE SOURCES, WHERE REQUIRED BY 40 CFR 51.30

Data elements	Every-year reporting	Three-year reporting
1. Inventory year	✔	✔
2. Inventory start date	✔	✔
3. Inventory end date	✔	✔
4. Inventory type	✔	✔
5. Contact name	✔	✔
6. Contact phone number	✔	✔
7. FIPS code	✔	✔
8. SCC or PCC	✔	✔
9. Emission factor	✔	✔
10. Activity (VMT by SCC)	✔	✔
11. Pollutant code	✔	✔
12. Ozone season emissions (if applicable)	✔	✔
13. Summer day emissions (if applicable)	✔	✔
14. Annual emissions	✔	✔
15. Winter throughput (percent)	✔	✔
16. Spring throughput (percent)	✔	✔
17. Summer throughput (percent)	✔	✔
18. Fall throughput (percent)	✔	✔

Subpart G—[Amended]

3. Section 51.122 is revised to read as follows:

§ 51.122 Emissions reporting requirements for SIP revisions relating to budgets for NO_X emissions.

(a) For its transport SIP revision under § 51.121, each State must submit to EPA NO_X emissions data as described in this section.

(b) Each revision must provide for periodic reporting by the State of NO_X emissions data to demonstrate whether the State's emissions are consistent with the projections contained in its approved SIP submission.

(1) For the every-year reporting cycle, each revision must provide for reporting of NO_X emissions data every year as follows:

(i) The State must report to EPA emissions data from all NO_X sources within the State for which the State specified control measures in its SIP submission under § 51.121(g). This would include all sources for which the State has adopted measures that differ from the measures incorporated into the baseline inventory for the year 2007 that the State developed in accordance with § 51.121(g).

(ii) If sources report NO_X emissions data to EPA for a given year pursuant to a trading program approved under § 51.121(p) or pursuant to the monitoring and reporting requirements of 40 CFR part 75, then the State need not provide an every-year cycle report to EPA for such sources.

(2) For the three-year cycle reporting, each plan must provide for triennial (i.e., every 3rd year) reporting of NO_X emissions data from all sources within the State.

(3) The data availability requirements in § 51.116 of this part must be followed for all data submitted to meet the requirements of paragraphs (b)(1) and (2) of this section.

(c) The data reported in paragraph (b) of this section must meet the requirements of subpart A of this part.

(d) Approval of ozone season calculation by EPA. Each State must submit for EPA approval an example of the calculation procedure used to calculate ozone season emissions along with sufficient information to verify the calculated value of ozone season emissions.

(e) *Reporting schedules.* (1) Data collection is to begin during the ozone season 1 year prior to the State's NO_X SIP Call compliance date.

(2) Reports are to be submitted according to paragraph (b) of this section and the schedule in Table 1 of this paragraph (e)(2). After 2011, triennial reports are to be submitted every 3rd year and annual reports are to be submitted each year that a triennial report is not required.

TABLE 1 TO § 51.122(E)(2).—SCHEDULE FOR SUBMITTING REPORTS

Data collection year	Type of report required
2005	Triennial.
2006	Annual.
2007	Annual.
2008	Triennial.
2009	Annual.

TABLE 1 TO § 51.122(E)(2).—SCHEDULE FOR SUBMITTING REPORTS—Continued

Data collection year	Type of report required
2010	Annual.
2011	Triennial.

(3) States must submit data for a required year no later than 12 months after the end of the calendar year for which the data are collected. The first inventory (for the year 2008) must be submitted to EPA within 12 months, i.e., by December 31, 2009. The same 12-month reporting sequence will apply for the inventories for the years 2009 and 2010, i.e., these inventories must be reported to EPA by December 31, 2010 and December 31, 2011 respectively. Beginning with the year 2011, and for all subsequent inventories, the inventories will be due 6 months following the end of the reporting year, i.e., the 2011 inventory must be reported to EPA by June 30, 2012.

(f) Data reporting procedures are given in subpart A. When submitting a formal NO_X Budget Emissions Report and associated data, States shall notify the appropriate EPA Regional Office.

(g) As used in this section, words and terms shall have the meanings set forth in § 51.50 of this part.

[FR Doc. 05–24614 Filed 12–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2005–MT–0002, FRL–8012–7]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Emergency Episode Avoidance Plan; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Montana on August 2, 2004. The revision is to the State's Emergency Episode Avoidance Plan (EEAP). In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before February 2, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2005–MT–0002, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and *ostrand.laurie@epa.gov.*
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202–2466, (303) 312–6437, *ostrand.laurie@epa.gov.*

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: December 7, 2005.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

[FR Doc. 05–24365 Filed 12–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2005–TN–0004–200526(b); FRL–8014–5]

Approval and Promulgation of Implementation Plans; Tennessee and Nashville-Davidson County; Approval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve non-regulatory revisions to the Tennessee State Implementation Plan (SIP) and regulatory revisions to the Nashville-Davidson portion of the Tennessee SIP, submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) on January 26, 1999, October 11, 2001, and April 15, 2005. The revisions amend the Vehicle Inspection and Maintenance program in Nashville-Davidson County and the Nashville (Middle Tennessee) Ozone Maintenance Area Plan. In the Rules Section of this **Federal Register**, the EPA is approving the SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before February 2, 2006.

ADDRESSES: Comments may be submitted by mail to: Anne Marie Hoffman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **ADDRESSES** section which is published in the Rules Section of this **Federal Register**.

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

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: December 9, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05–24412 Filed 12–30–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 71, No. 1

Tuesday, January 3, 2006

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

Commodity Credit Corporation

Notice of Request for Extension and Revision of Currently Approved Information Collections

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for a currently approved information collection in support of the Technical Assistance for Specialty Crops (TASC).

DATES: Comments on this notice must be received by March 6, 2006 to be assured of consideration.

Additional Information or Comments: Contact Director, Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1042, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Title: Technical Assistance for Specialty Crops.

OMB Number: 0551–0038.

Expiration Date of Approval: May 31, 2006.

Type of Request: Extension of a currently approved information collections.

Abstract: This information is needed to administer CCC's Technical Assistance for Specialty Crops program. The information will be gathered from applicants desiring to receive grants under the program to determine the viability of requests for funds. Regulations governing the program appear at 7 CFR part 1487 and are available on the Foreign Agricultural Service's Web site.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 32 hours per respondent.

Respondents: U.S. government agencies, State government agencies, non-profit trade associations, universities, agricultural cooperatives, and private companies.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 1,600 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Request for Comments: Send comments regarding (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Director, Marketing Operations Staff, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1042, Washington, DC 20250–1042 and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Facsimile submissions may be sent to (202) 720–9361 and electronic mail submissions should be addressed to: *mosadmin@fas.usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC December 28, 2005.

W. Kirk Miller,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 05–24682 Filed 12–30–05; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Form FNS–209, Status of Claims Against Households

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this Notice invites the general public and other public agencies to comment on proposed information collections. Sections 11, 13, and 16 of the Food Stamp Act of 1977 (the Act) are the basis for the information collected on Form FNS–209, Status of Claims Against Households. Section 11 of the Act requires that State agencies submit reports and other information that are necessary to determine compliance with the Act and its implementing regulations. Section 13 of the Act requires State agencies to establish claims and collect overpayments against households. Section 16 of the Act authorizes State agencies to retain a portion of what is collected. The FNS–209 is used as the mechanism for State agencies to report the claim establishment, collection and retention amounts.

DATES: Written comments must be submitted on or before March 6, 2006 to be assured consideration.

ADDRESSES: Send comments to Jane Duffield, Chief, Payment Accuracy Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 818, Alexandria, Virginia, 22302.

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the

agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Contact Leslie Byrd at (703) 305–2472 for further information.

SUPPLEMENTARY INFORMATION:

Title: Status of Claims Against Households

OMB Number: 0584–0069.

Form Number: FNS–209.

Expiration Date: May 31, 2006.

Type of Request: Extension of a currently approved collection with no change in burden hours.

Abstract: The Food Stamp Program (FSP) regulations at 7 CFR 273.18 require that State agencies establish, collect and efficiently manage food stamp recipient claims. These processes are required by Sections 11, 13 and 16 of the Food Stamp Act of 1977, 7 U.S.C. 2020, 2022 and 2025. Regulations at 7 CFR 273.18(m)(5) require State agencies to submit at the end of every quarter the completed Form FNS–209, Status of Claims Against Households. The information required for the FNS–209 report is obtained from a State accounting system responsible for establishing claims, sending demand letters, collecting claims, and managing other claim activity. In general, State agencies must report the following information on the FNS–209: the current outstanding aggregate claim balance; claims established; collections; any balance and collection adjustments; and the amount to be retained for collecting non-agency error claims. The burden associated with establishing claims (demand letters) and the Treasury Offset Program, both of which are also used to complete the FNS–209, are already approved under OMB burden numbers 0584–0492 and 0584–0446 respectively.

The estimated annual burden is 742 hours. This is the same as the currently approved burden. This estimate includes the time it takes each State agency to accumulate and tabulate the data necessary to complete the report four times per year.

Affected Public: State agencies.

Estimated Number of Respondents: 53.

Number of Responses per Respondent: 4.

Total Responses: 212.

Estimated Time per Response: 3 hours.

Reporting Burden: 636.

Total Number of Recordkeepers: 53.

Estimated Annual hours per Recordkeeper: 2.

Recordkeeping Burden: 106.

Estimated Total Annual Burden: 742.

Dated: December 23, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E5–8195 Filed 12–30–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests Southwest Idaho Resource Advisory Committee will conduct a business meeting, which is open to the public.

DATES: Wednesday, January 18, 2005, beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

FOR FURTHER INFORMATION CONTACT: Doug Gochnour, Designated Federal Officer, at 208–392–6681 or e-mail *dgochnour@fs.fed.us.*

Dated: December 22, 2005.

Richard A. Smith,

Forest Supervisor, Boise National Forest.

[FR Doc. 05–24679 Filed 12–30–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Madison-Beaverhead Advisory Committee Meeting Date and Location

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting date and location.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Beaverhead-Deerlodge National Forest's Madison-Beaverhead Resource Advisory Committee will meet on Thursday, January 19, 2006, from 10 a.m. until 4 p.m., in Ennis, Montana, for a business meeting. The meeting is open to the public.

DATES: Thursday, January 19, 2006.

ADDRESSES: The meeting will be held at the Forest Service office, 5 Forest Service Road, Ennis, Montana.

FOR FURTHER INFORMATION CONTACT: Bruce Ramsey, Designated Forest Official (DFO), Forest Supervisor, Beaverhead-Deerlodge National Forest, at (406) 683–3973.

SUPPLEMENTARY INFORMATION: Agenda topics for this meeting include electing a chair, hearing and deciding on proposals for projects to fund under Title II of Public Law 106–393, hearing public comments, and other business. If the meeting location changes, notice will be posted in local newspapers, including the Dillon Tribune and The Montana Standard.

Dated: December 27, 2005.

Bruce Ramsey,

Acting Forest Supervisor.

[FR Doc. 05–24680 Filed 12–30–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Sites; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Intermountain Region, Forest Service, USDA.

ACTION: Notice of new fee site.

SUMMARY: The Boise National Forest will begin charging fees for the overnight rental of Cottonwood Guard Station, including the Bunkhouse ($35/night), Research House ($40/night), and Ranger House ($40/night). The Dixie National Forest will begin charging fees

for the overnight rental of Cowpuncher Guard Station ($45/night), Jones Corral Guard Station ($30/night), and Podunk Guard Station ($30/night). Rentals of other guard station cabins throughout the Intermountain Region have shown that publics appreciate and enjoy the availability of historic rental cabins. Funds from the rental will be used for the continued operation and maintenance of recreation sites.

DATES: The guard station cabins will become available for rent May 2006.

ADDRESSES: Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, ID 83709; Forest Supervisor, Dixie National Forest, 1789 North Wedgewood Land, Cedar City, UT 84720.

FOR FURTHER INFORMATION CONTACT: Vicki Lawson, Regional Recreation Fee Coordinator, 801–625–5205.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish an advance notice in the **Federal Register** whenever new recreation fee areas are established.

The Intermountain Region currently offers over 40 other cabin rentals, including guard stations and fire lookouts. These often are fully booked throughout their rental season. A business analysis of the cabins has shown that people desire having this sort of recreation experience on the Boise and Dixie National Forests and that the fees charged are both reasonable and acceptable for this sort of unique recreation experience.

People wanting to rent these guard station cabins will need to do so through the National Recreation Reservation Service, at *http://www.reserveusa.com* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for reservations.

Dated: December 19, 2005.

Jack Troyer,

Regional Forester, Intermountain Region.

[FR Doc. 05–24693 Filed 12–30–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Census Bureau

Census Coverage Measurement Person Followup Interview and Person Followup Reinterview Operations

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 March 6, 2006.

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 Magdalena Ramos, U.S. Census Bureau, Building 2, Room 2126, Washington, DC 20233–9200, 301–763–4295.

SUPPLEMENTARY INFORMATION:

I. Abstract

In preparation for the 2010 Census, the U.S. Census Bureau will conduct a Census Coverage Measurement (CCM) test as part of the 2006 Census Test. The 2006 CCM operations will occur in Travis County, Texas; and on the Cheyenne River Reservation in South Dakota. The purpose of the 2006 CCM test is not to measure the coverage of the 2006 Census Test per se, but rather to test ways of improving previous coverage measurement methods. In particular, the focus of the 2006 CCM test is to test improved matching operations and data collection efforts designed to obtain more accurate information about where a person should have been enumerated according to our residence rules.

This focus is motivated by: (1) Problems encountered with coverage measurement in Census 2000 in determining a person's residence (relative to our residence rules), (2) the significant number of duplicate enumerations in Census 2000, and (3) expanded goals for coverage measurement in the 2010 Census. The latter refers to our objective of producing, for the first time, separate estimates of coverage error components—omissions and erroneous inclusions including duplicates (see Definition of Terms). The data collection and matching methodologies for previous coverage measurement programs were designed only to measure net coverage error, which reflects the difference between omissions and erroneous inclusions (see Definition of Terms). In order to produce separate estimates of these coverage error components, we need to develop and test changes to our data collection and matching methods. In particular, the CCM efforts will focus on ways to obtain better information about addresses where people should have, and could have, been enumerated during the census.

The 2006 CCM test will be comprised of two overlapping samples, a population sample (P sample) and a sample of census records. The P sample will be obtained by independently rostering persons in housing units within the CCM sampled block clusters. The independent roster is obtained during the CCM Person Interview (PI), the results of which will be matched to census enumerations in the sample blocks, in surrounding blocks and across the entire site. A separate **Federal Register** notice was previously published describing the PI operations. After the CCM PI and matching operations have taken place, some cases will receive the CCM Person Followup (PFU) interview. Generally, these will be cases where additional information is needed to determine residence status or where inconsistencies were observed during the matching operations. We also will conduct a quality control operation of the PFU called the Person Followup Reinterview (PFURI).

II. Method of Collection

After the CCM Person Interview and the initial person matching operations are complete, the cases requiring a PFU interview will be identified. The estimated workload for the PFU is approximately 2,000 cases in Travis County, Texas; and 200 cases on the Cheyenne River Reservation in South Dakota. A sample of the PFU cases will be selected for Person Followup Reinterview (PFURI). This sample consists of approximately 200 cases in Travis County, Texas; and 20 cases on the Cheyenne River Reservation in South Dakota. The PFU and PFURI operations will be conducted from January 8, 2007 to February 3, 2007.

The PFU operation will use an interviewer-administered paper questionnaire. The questionnaire will contain the English version of the questionnaire on one side of the form and the Spanish version on the reverse side. The PFU questionnaire is designed to collect information to determine where a person should have been counted as of Census Day and as of the CCM PI date (relative to our residence

rules). In order to clarify residence status, particularly for more complex living situations, the questionnaire will collect additional addresses where a person lived or stayed in 2006. The PFU questionnaire also will collect information to help determine if person records with similar names and data collected in the PI or the census actually refer to the same person. This includes both possible matches between the P sample and census enumerations and possible person duplications in the P sample or census enumerations.

The PFURI operation will use an interviewer-administered paper questionnaire to determine if the source of the PFU data (for example, a household member; a specific proxy respondent) can be confirmed. If the PFURI cannot confirm the source of the original PFU interview, then a PFURI interviewer will conduct a replacement PFU interview.

Definition of Terms

Components of Coverage Error—The two components of census coverage error are census omissions (missed persons) and erroneous inclusions. The latter includes duplicates and persons who should not have been enumerated at a particular address (per our residence rules).

Net Coverage Error—Reflects the difference between omissions and erroneous inclusions. A positive net error indicates an undercount, while a negative net error indicates an overcount.

For more information about Census 2000 coverage measurement efforts, please visit the following page of the Census Bureau's Web site: *http://www.census.gov/dmd/www/refroom.html.*

III. Data

OMB Number: None.
Form Number: DD–1301.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2420.

Estimated Times per Response: 20 minutes.

Estimated Total Annual Burden Hours: 807.

Estimated Total Annual Cost to the Public: There is no cost to the respondents except their time to respond.

Respondent Obligation: Mandatory.

Legal Authority: Title 13 of the United States Code, sections 141 and 193.

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; (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 the information collection; they also will become a matter of public record.

Dated: December 27, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–8158 Filed 12–30–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4697.

Background:

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2004) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review:

Not later than the last day of January 2006,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
Antidumping Duty Proceedings	
BRAZIL: Brass Sheet and Strip.	
A–351–603	1/1/05 - 12/31/05
BRAZIL: Prestressed Concrete Steel Wire Strand.	
A–351–837	1/1/05 - 12/31/05
BRAZIL: Stainless Steel Wire Rod.	
A–351–819	1/1/05 - 12/31/05
CANADA: Brass Sheet and Strip.	
A–122–601	1/1/05 - 12/31/05
FRANCE: Stainless Steel Wire Rods.	
A–427–811	1/1/05 - 12/31/05
INDIA: Prestressed Concrete Steel Wire Strand.	

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period
A–533–828	1/1/05 - 12/31/05
MEXICO: Prestressed Concrete Steel Wire Strand.	
A–201–831	1/1/05 - 12/31/05
SOUTH AFRICA: Ferrovanadium.	
A–791–815	1/1/05 - 12/31/05
SOUTH KOREA: Prestressed Concrete Steel Wire Strand.	
A–580–852	1/1/05 - 12/31/05
SOUTH KOREA: Top–of-the Stove Stainless Steel Cooking Ware.	
A–580–601	1/1/05 - 12/31/05
TAIWAN: Top–of-the–Stove Stainless Steel Cooking Ware.	
A–583–603	1/1/05 - 4/17/05
THAILAND: Prestressed Concrete Steel Wire Strand.	
A–549–820	1/1/05 - 12/31/05
THE PEOPLE'S REPUBLIC OF CHINA: Crepe Paper Products.	
A–570–895	6/24/04 - 12/31/05
THE PEOPLE'S REPUBLIC OF CHINA: Ferrovanadium.	
A–570–873	1/1/05 - 12/31/05
THE PEOPLE'S REPUBLIC OF CHINA: Folding Gift Boxes.	
A–570–866	1/1/05 - 12/31/05
THE PEOPLE'S REPUBLIC OF CHINA: Potassium Permanganate.	
A–570–001	1/1/05 - 12/31/05
THE PEOPLE'S REPUBLIC OF CHINA: Wooden Bedroom Furniture.	
A–570–890	6/24/04 - 12/31/05
Countervailing Duty Proceedings	
BRAZIL: Brass Sheet and Strip.	
C–351–604	1/1/05 - 12/31/05
SOUTH KOREA: Top–of-the–Stove Stainless Steel Cooking Ware.	
C–580–602	1/1/05 - 12/31/05
TAIWAN: Top–of-the–Stove Stainless Steel Cooking Ware.	
C–583–604	1/1/05 - 4/17/05
Suspension Agreements	
RUSSIA: Certain Cut–to-Length Carbon Steel.	
A–821–808	1/1/05 - 12/31/05

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department changed its requirements for requesting reviews for countervailing duty orders. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order–by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration web site at http://ia.ita.doc.gov.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of January 2006. If the Department does not receive, by the last day of January 2006, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from rehouse, for consumption and to continue to collect the cash deposit previously ordered.

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 16, 2005.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4 for Import Administration.

[FR Doc. E5–8211 Filed 12–30–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five–Year ("Sunset") Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five–year ("Sunset Reviews") of the antidumping duty orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five–Year Review* which covers these same orders.

EFFECTIVE DATE: January 3, 2006.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review(s)* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3 – *Policies Regarding the Conduct of Five–Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A–570–822	731–TA–624	PRC	Helical Spring Lock Washers (2nd Review)	Maureen Flannery (202) 482–3020
A–583–820	731–TA–625	Taiwan	Helical Spring Lock Washers (2nd Review)	Maureen Flannery (202) 482–3020
A–351–824	731–TA–671	Brazil	Silicomanganese (2nd Review)	Zev Primor (202) 482–4114
A–570–828	731–TA–672	PRC	Silicomanganese (2nd Review)	Zev Primor (202) 482–4114
A–823–805	731–TA–673	Ukraine	Silicomanganese (2nd Review)	Zev Primor (202) 482–4114
A–351–806	731–TA–471	Brazil	Silicon Metal (2nd Review)	Maureen Flannery (202) 482–3020
A–570–806	731–TA–472	PRC	Silicon Metal (2nd Review)	Maureen Flannery (202) 482–3020
A–475–828	731–TA–865	Italy	Stainless Steel Butt–Weld Pipe Fittings	Dana Mermelstein (202) 482–1391
A–557–809	731–TA–866	Malaysia	Stainless Steel Butt–Weld Pipe Fittings	Dana Mermelstein (202) 482–1391
A–565–801	731–TA–867	Philippines	Stainless Steel Butt–Weld Pipe Fittings	Dana Mermelstein (202) 482–1391

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the Department's regulations regarding *Sunset Reviews* (19 CFR 351.218) and Sunset Policy Bulletin, the Department's schedule of Sunset Reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists available to the public on the Department's sunset Internet website at the following address: "http://ia.ita.doc.gov/sunset/." All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties (defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in these Sunset Reviews must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15–day deadline, the Department will automatically revoke the orders without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order–specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order–specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the

Continued

consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: December 14, 2005.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4 for Import Administration.

[FR Doc. E5–8210 Filed 12–30–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Upcoming Sunset Reviews.

SUPPLEMENTARY INFORMATION:

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for February 2006

The following Sunset Reviews are scheduled for initiation in February 2006 and will appear in that month's Notice of Initiation of Five–Year Sunset Reviews.

Antidumping Duty Orders	Department Contact
Fresh Garlic from the People's Republic of China (A–570–831) - (2nd Review)	Maureen Flannery (202) 482–3020
Grain–Oriented Electrical Steel from Italy (A–475–811) - (2nd Review)	Dana Mermelstein (202) 482–1391
Grain–Oriented Electrical Steel from Japan (A–588–831) - (2nd Review)	Dana Mermelstein (202) 482–1391
Countervailing Duty Orders	
Grain–Oriented Electrical Steel from Italy (C–475–812) - (2nd Review)	David Goldberger (202) 482–4136
Suspended Investigations	
No suspended investigations are scheduled for initiation in February 2006.	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3--Policies Regarding the Conduct of Five–Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin"). The Notice of Initiation of Five–Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 14, 2005.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4 for Import Administration.

[FR Doc. E5–8212 Filed 12–30–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–827)

Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: M.A. Notch Corporation (Notch) filed a request for a changed circumstances review of the antidumping duty (AD) order on certain cased pencils from the People's Republic of China (PRC). Specifically, Notch requests that the Department revoke the AD order with respect to a large novelty pencil, which is described below. Certain domestic interested parties have affirmatively expressed a lack of interest in the continuation of the order with respect to this product.[1] In response to the request, the Department initiated a changed circumstances review of the AD order on certain cased pencils from the PRC.

final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

[1] These domestic interested parties are Sanford Corporation, Musgrave Pencil Company, Rose Moon, Inc., and General Pencil Company, domestic manufacturers of cased pencils, (collectively, the domestic interested parties).

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Charles Riggle, 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) 482–4474 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 2005, Notch, a U.S. importer, filed a request asking the Department to revoke the AD order on certain cased pencils from the PRC with respect to a large novelty pencil. *See* Notch letter to the Secretary, dated April 5, 2005 (Notch Request Letter). Specifically, Notch requests that the Department revoke the AD order with respect to imports of certain cased pencils meeting the following description: novelty jumbo pencil that is octagonal in shape, approximately ten inches long, one inch in diameter, and three–and-one eighth inches in circumference, composed of turned wood encasing one–and-one half inches of sharpened lead on one end and a rubber eraser on the other end. *See* Notch Request Letter at 1. On May 6, 2005, the domestic interested parties submitted a letter to the Department stating that they " * * * do not object to exclusion of items meeting the description set forth in the quoted description" (as stated above). On August 22, 2005,[2] the Department initiated a changed circumstances review. *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Cased Pencils from the People's Republic of China*, 70 FR 51336 (August 30, 2005).

On August 25, 2005, we informed all interested parties that comments on the initiation of the changed circumstances review and/or comments with respect to whether the domestic interested parties account for substantially all of the production of the domestic like product, were due 21 days subsequent to publication of the initiation notice in the **Federal Register**. No interested party submitted comments.

Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as described below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man–made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non–cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above–referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: 1) length: 13.5 or more inches; 2) sheath diameter: not less than one–and-one quarter inches at any point (before sharpening); and 3) core length: not more than 15 percent of the length of the pencil.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Prior Changed Circumstance Rulings

The Department has published the final results of the following changed circumstances reviews to date:

(1) On November 4, 2003 the Department published the final results of a changed circumstances review that excluded from the scope of the order pencils with all of the following physical characteristics: 1) length: 13.5 or more inches; 2) sheath diameter: not less than one–and-one quarter inches at any point (before sharpening); and 3) core length: not more than 15 percent of the length of the pencil. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China*, 68 FR 62428 (November 4, 2003).

(2) On March 27, 2003 the Department published the final results of a changed circumstances review that excluded from the scope of the order pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above–referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China*, 68 FR 14942 (March 27, 2003).

Preliminary Results of AD Changed Circumstances Review and Intent to Revoke in Part

Section 751(d)(1) of the Act and section 351.222(g) of the Department's regulations provide that the Department may revoke an AD or countervailing duty order, in whole or in part, after conducting a changed circumstances review and concluding from the available information that changed circumstances sufficient to warrant revocation or termination exist. The Department may conclude that changed circumstances sufficient to warrant revocation (in whole or in part) exist when producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the order, in whole or in part. *See* section 782(h)(2) of the Act and section 351.222 (g)(1)(I) of the Department's regulations. Based on an affirmative statement by the domestic interested parties, producers of the like product, and the fact that no party has commented otherwise, we find that no interest exists in continuing the AD order with respect to large novelty pencils described in the proposed scope language below. Therefore, we are hereby notifying the public of our preliminary intent to revoke, in part, the AD order on certain cased pencils from the PRC with respect to imports of novelty pencils that meet the description below.

New Scope of the Order

Upon publication of the final results of this changed circumstances review, if there are no changes from the preliminary results, we intend to modify the scope of the AD order to read as follows:

> Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as noted below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man–made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic

[2] This is the signature date.

pencils, pens, non–cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above–referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: 1) length: 13.5 or more inches; 2) sheath diameter: not less than one–and-one quarter inches at any point (before sharpening); and 3) core length: not more than 15 percent of the length of the pencil.

In addition, pencils with all of the following physical characteristics are excluded from the scope of the order: novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three–and-one eighth inches in circumference, composed of turned wood encasing one–and-one half inches of sharpened lead on one end and a rubber eraser on the other end. Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

If the final partial revocation occurs, we intend to instruct U.S. Customs and Border Protection (CBP) to liquidate, without regard to applicable antidumping duties, all unliquidated entries of pencils that meet the above–noted exclusion, and to refund any estimated antidumping duties collected on such merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2001, the day after the most recent period for which the Department issued assessment instructions to CBP (12/1/2000–11/30/2001), in accordance with section 351.222 of the Department's regulations. We will also instruct CBP to pay interest on such refunds with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2001, in accordance with section 778 of the Act. *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order in Part: Certain Cut–To-Length Carbon–Quality Steel Plate Products from Japan*, 68 FR 1436 (January 10, 2003).

The current cash deposit rate will remain in effect for all entries of subject merchandise until completion of an administrative review.

Public Comment

Interested parties are invited to comment on these preliminary results. Written comments may be submitted by interested parties not later than 14 days after the date of publication of this notice. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Pursuant to section 351.309(d) of the Department's regulations, rebuttals to written comments, limited to the issues raised in the case briefs, may be filed not later than five days after the deadline for submission of case briefs. Also, interested parties may request a hearing within 30 days of publication of this notice. Any hearing, if requested, may be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. All written comments shall be submitted in accordance with section 351.303 of the Department's regulations and shall be served on all interested parties on the Department's service list. The Department will issue the final results of this review within the time limits established in section 351.216(e) of its regulations.

This notice is published in accordance with section 751(b)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations.

Dated: December 7, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–8213 Filed 12–30–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–507–502)

Continuation of Antidumping Duty Order on Certain In–Shell Pistachios from Iran

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce ("the Department") and the International Trade Commission ("ITC") that revocation of the antidumping duty order on certain in–shell pistachios ("in–shell pistachios") from Iran would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing notice of continuation of this antidumping duty order.

EFFECTIVE DATE: January 3, 2006.

CONTACT INFORMATION: Dana Mermelstein, AD/CVD Operations, Office 6, or John Drury, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–1391 or (202) 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2005, the Department initiated and the ITC instituted a sunset review of the antidumping duty order on in–shell pistachios from Iran, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[1]

As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked.[2] On December 22, 2005, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on in–shell pistachios from Iran would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order

The product covered by the antidumping duty order is raw, in–shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells, and edible meats from Iran. This merchandise is currently provided for in subheading 0802.50.20.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Determination

As a result of the determinations by the Department and the ITC that

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[1] See *Initiation of Five-Year ("Sunset") Reviews*, 70 FR 9919 (March 1, 2005) and *Raw In-Shell Pistachios from Iran*, 70 FR 9976 (March 1, 2005).

[2] *See Certain In-Shell Pistachios from Iran; Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 70 FR 57855 (October 4, 2005).

[3] *See Raw In-Shell Pistachios from Iran*, 70 FR 76076 (December 22, 2005) and *USITC Publication 3824, Investigation No. 731-TA-287 (Review)* (December 2005).

revocation of this antidumping duty order would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on in–shell pistachios from Iran. U.S. Customs and Border Protection will continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than March 2010.

This notice is in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: December 23, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–8214 Filed 12–30–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–588–835

Oil Country Tubular Goods from Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On September 7, 2005, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results and preliminary partial rescission of the administrative review of the antidumping duty order on Oil Country Tubular Goods (OCTG) from Japan. This review covers four manufactures/exporters: JFE Steel Corporation (JFE), Nippon Steel Corporation (Nippon), NKK Tubes (NKK) and Sumitomo Metal Industries, Ltd. (SMI). The period of review (POR) covers sales of subject merchandise to the United States during the period of August 1, 2003, through July 31, 2004.

We provided interested parties with an opportunity to comment on the preliminary results of review. However, we received no comments from interested parties. Consequently, no changes have been made to the dumping margins set forth in the preliminary results of this administrative review. For the margins applicable to each respondent, see the "Final Results of Review" section of this notice.

EFFECTIVE DATE: January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Kimberley Hunt, AD/CVD Operations office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3148 or (202) 482–1272, respectively.

SUPPLEMENTARY INFORMATION: On September 7, 2005, the Department published in the **Federal Register** the preliminary results and preliminary partial rescission of the administrative review of the antidumping duty order on OCTG from Japan. *See Oil Country Tubular Goods from Japan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 70 FR 53161 (September 7, 2005) (*Preliminary Results*). No interested parties filed case briefs in response to the Department's invitation to comment on the *Preliminary Results*.

SCOPE OF THE ORDER

The merchandise covered by this order consists of oil country tubular goods, hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non–API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.21.30.00, 7304.21.60.30, 7304.21.60.45, 7304.21.60.60, 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

FINAL RESULTS OF REVIEW

As stated in the *Preliminary Results*, the Department confirmed that neither NKK nor SMI made sales of subject merchandise during the POR. Additionally, neither JFE nor Nippon participated in this review. We did not receive comments on either our preliminary decision to rescind the review with respect to NKK and SMI, nor on our decision to apply an adverse facts available (AFA) rate to JFE and Nippon.[1] Accordingly, we do not have any reason to reconsider our preliminary decision. Therefore, consistent with the Department's preliminary results of this review, and in accordance with 19 CFR § 351.213(d)(3), we are rescinding the instant review with respect to both NKK and SMI and have made no changes to the weighted–average dumping margins applied to JFE and Nippon in the preliminary results of this administrative review.

We determine that the following dumping margins exist for the period August 1, 2003, through July 31, 2004:

Manufacturer/Exporter	Margin (percent)
JFE Steel Corporation	44.20
Nippon Steel Corporation	44.20

DUTY ASSESSMENT

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR § 351.212(b). We will direct CBP to assess the dumping rate listed above against all subject merchandise manufactured or exported by JFE or Nippon, and entered or withdrawn from warehouse for consumption during the POR. For all subject merchandise

[1] As AFA, we applied the highest rate from the investigation, 44.20 percent, which is also the only rate determined in the investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Oil Country Tubular Goods from Japan*, 60 FR 155 (August 11, 1995) (*Amended Final Determination*).

manufactured by either NKK or SMI that was entered or withdrawn from warehouse for consumption during the POR, we will direct CBP to liquidate at the "all others" rate, 44.20 percent, as all such sales were made by intermediary companies (*e.g.*, resellers) not covered in this review, a prior review, or the less than fair value (LTFV) investigation. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

CASH DEPOSIT REQUIREMENTS

The following cash deposit rates will be effective with respect to all shipments of OCTG from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act: (1) for JFE and Nippon, the cash deposit rate shall be 44.20 percent (the AFA rate from the investigation); (2) for previously reviewed or investigated companies not listed above, including NKK and SMI, the cash deposit rate will continue to be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will continue to be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate shall be the "all others" rate established in the LTFV investigation, which is 44.20 percent. *See Amended Final Determination*. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

NOTIFICATION TO IMPORTERS

This notice serves as a 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 presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

ADMINISTRATIVE PROTECTIVE ORDERS

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR § 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 23, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–8215 Filed 12–30–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–810, A–583–815)

Welded ASTM A–312 Stainless Steel Pipe from South Korea and Taiwan: Notice of Final Results of Expedited ("Sunset") Reviews of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 1, 2005, the Department of Commerce ("the Department") published a notice of initiation of the second sunset reviews of the antidumping duty orders on welded ASTM A–312 stainless steel pipe ("WSSP") from South Korea ("Korea") and Taiwan, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive responses from the domestic interested parties and no response from respondent interested parties, the Department has conducted expedited sunset reviews of these antidumping duty orders. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the level indicated in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: January 3, 2006.

FOR INFORMATION CONTACT: Dana Mermelstein or Martha Douthit, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution, NW., Washington, DC 20230; telephone: (202) 482–1391 or (202) 482–5050, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2005, the Department published a notice of initiation of the second sunset reviews of the antidumping duty orders on WSSP from Korea and Taiwan, pursuant to section 751(c) of the Act. *See Initiation of Five-year ("Sunset") Reviews*, 70 FR 52074 (September 1, 2005).

We received notices of intent to participate, in each of the two sunset reviews, on behalf of Bristol Metals, L.P. and Marcegaglia U.S.A., Inc. (collectively, "the domestic interested parties"), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested party status as producers of the subject merchandise pursuant to section 771(9)(C) of the Act. The domestic interested parties were petitioners in the original investigations, or successors to petitioners, and have participated in subsequent reviews.

On September 29, 2005, the Department received complete substantive responses to the notice of initiation from the domestic interested parties within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department's regulations. The Department received no substantive responses from respondent interested parties. Based on these circumstances, pursuant to sections 751(c)(3)(B) of the Act and 351.218(e)(1)(ii)(C), the Department has conducted expedited reviews of these orders.

Scope of the Orders

The merchandise subject to each of these antidumping duty orders is WSSP that meets the standards and specifications set forth by the American Society for Testing and Materials ("ASTM") for the welded form of chromium–nickel pipe designated ASTM A–312. The merchandise covered by the scope of each order also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A–312. WSSP is produced by forming stainless steel flat–rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a

conduit to transmit liquids or gases. Major applications for steel pipe include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines. Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTS") subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of these antidumping duty orders is limited to welded austenitic stainless steel pipes.

The HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of these orders is dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties to these sunset reviews are addressed in the *Issues and Decision Memorandum for Final Results of Expedited ("Sunset") Reviews of the Antidumping Duty Orders on Welded ASTM A–312 Stainless Steel Pipe from South Korea and Taiwan*, from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration (*Decision Memo*), dated December 30, 2005, which is hereby adopted by this notice. The issues discussed in the *Decision Memo* include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked.

Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at *http://ia.doc.gov/frn*. The paper copy and electronic version of the *Decision Memo* are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the following weighted–average margins:

KOREA

Manufacturer/Exporter	Weighted Average Margins (percent)
Pusan Steel Pipe Co., Ltd. (now SeAH Steel Corporation)	2.67

KOREA—Continued

Manufacturer/Exporter	Weighted Average Margins (percent)
Sammi Metal Products Co., Ltd.	7.92
All Others	7.00

TAIWAN

Manufacturer/Exporter	Weighted Average Margins (percent)
Jaung Yuann Enterprise Co., Ltd.	31.90
Yeun Chyang Industrial Co., Ltd.	31.90
All Others	19.84

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: December 23, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–8209 Filed 12–30–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121605C]

Endangered Species; Permit No. 1429

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

ACTION: Notice; modification of scientific research permit.

SUMMARY: Notice is hereby given that a request for modification of scientific research Permit No. 1429 submitted by the National Marine Fisheries Service, Southeast Fisheries Science Center (SEFSC) has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289, fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Amy Hapeman, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the provisions of 50 CFR 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR 222–226).

The modification extends the expiration date of the permit from December 31, 2005, to December 31, 2006, for takes of green (*Chelonia mydas*), loggerhead (*Caretta caretta*), olive ridley (*Lepidochelys olivacea*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*) and Kemp's ridley (*Lepidochelys kempii*) sea turtles. The permit allows the SEFSC to conduct sea turtle bycatch reduction research in the pelagic longline fishery of the western north Atlantic Ocean. The purpose of the research is to develop and test methods to reduce bycatch that occurs incidental to commercial pelagic longline fishing.

Issuance of this modification, as required by the ESA was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of any threatened and endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 22, 2005.

Steve Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E5–8219 Filed 12–30–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Open Meeting of the National Advisory Council on Indian Education

AGENCY: National Advisory Council on Indian Education (NACIE), DOE.

ACTION: Notice of teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming open teleconference meeting of the National Advisory Council on Indian Education (the Council) and is intended to notify the general public of their opportunity to listen as the Council conducts their meeting by teleconference. This notice also describes the functions of the Council. Notice of the Council's meetings is required under section 10(a)(2) of the Federal Advisory Committee Act and by the Council's charter.

Agenda: The purpose of the meeting will be to discuss the status of NACIE vacancies, update on the Designated Federal Officer position, receive updates on FY06 budget, and the development of the February agenda to include other Federal agencies identified in the Executive Order 13336, American Indian and Alaska Native Education. The Council will review and update the NACIE activity plan.

Date and Time: January 20, 2006; 2 to 4 p.m.

Location: The Department of Education, Room 1W103, 400 Maryland Avenue, SW., Washington, DC 20202. **Note:** Attendees will be required to show picture identification to enter the building.

FOR FURTHER INFORMATION CONTACT: Bernard Garcia, Group Leader, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: 202–260–1454. Fax: 202–260–7779.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the ESEA. The Council submitted to the Congress June 30 a report on the activities of the Council that included recommendations the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

The general public is welcome to listen to the January 20, 2006 open meeting to be held from 2 to 4 p.m. in Washington, DC. Individuals who need accommodations for a disability in order to participate (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Bernard Garcia at 202–260–1454 by January 15, 2006. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities. Records are kept of all Council proceedings and are available for public inspection at the Office of Indian Education, United States Department of Education, Room 5C141, 400 Maryland Avenue, SW., Washington, DC 20202.

Henry L. Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 05–24670 Filed 12–30–05; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF99–84–002]

Air Products, LP; Notice of Filing

December 22, 2005.

Take notice that on December 7, 2005, Air Products, LP, pursuant to § 292.207(a) of the Commission's regulations, submitted for filing an Application for Commission Recertification as a Qualifying Cogeneration Facility status for an electric generating facility located in Port Arthur, Texas.

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 January 6, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8169 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–354–000]

California Independent System Operator Corporation; Notice of Filing

December 22, 2005.

Take notice that on December 21, 2005, California Independent System Operator Corporation (CAISO) pursuant to section 205 of the Federal Power Act, tendered for filing an amendment to the CAISO Tariff (Amendment No. 73).

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. 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 January 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8168 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–147]

CenterPoint Energy Gas Transmission Company; Notice of Supplement To Negotiated Rate Filing

December 27, 2005.

Take notice that on December 21, 2005, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing a supplement to its December 15, 2005, filing of an amended negotiated rate and non-conforming agreement between CEGT and Kiowa Power Partners, LLC to be effective February 1, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive 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. E5–8186 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–148–000]

Columbia Gulf Transmission Company; Notice of Tariff Filing

December 27, 2005.

Take notice that on December 15, 2005, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part its FERC Gas Tariff, Second Revised Volume No. 1, Seventh Revised Sheet No. 20 and Sixth Revised Sheet No. 20A, with a proposed effective date of January 14, 2006.

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. E5–8180 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–215–000, ER06–220–000, ER06–221–000, ER06–222–000, ER06–223–000, ER06–224–000 and ER06–225–000]

DeGreeffpa, LLC; Bendwith, LLC; Sierra Wind, LLC; Groen Wind, LLC; Larswind, LLC; TAIR Windfarm, LLC; Hillcrest Wind, LLC; Notice of Issuance of Order

December 22, 2005.

DeGreeffpa, LLC; Bendwith, LLC; Sierra Wind, LLC; Groen Wind, LLC; Larswind, LLC; TAIR Windfarm, LLC and Hillcrest Wind, LLC (Applicants) filed applications for market-based rate authority, with accompanying rate tariffs. The proposed rate tariffs provide for wholesale sales of energy and capacity at market-based rates. Applicants also requested waiver of various Commission regulations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Applicants.

On December 21, 2005, the Commission granted the requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protests, is January 19, 2006.

Absent a request to be heard in opposition by the deadline above, the Applicants are authorized to issue securities and assume obligations or liabilities as guarantors, indorsers, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of the Applicants' issuances of securities or assumptions of liability.

Copies of the full text of the Commission's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also 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 filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8167 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–342–004]

Discovery Gas Transmission LLC; Notice of Compliance Filing

December 27, 2005.

Take notice that on December 16, 2005, Discovery Gas Transmission LLC (Discovery) tenders for filing its actual costs incurred for final completion of Discovery's Market Expansion project pursuant to section 157.20(c)(3) of the Commission's regulations and order paragraph (B) of the order issued by the Commission in the above-captioned proceeding on May 6, 2004.

Discovery further states that copies of this filing are being served to its customers, state commissions and other interested parties.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive 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 January 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8173 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–071]

Dominion Transmission, Inc.; Notice of Negotiated Rates

December 27, 2005.

Take notice that on December 16, 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 January 1, 2006:

Fifth Revised Sheet No. 1404; Second Revised Sheet No. 1405; First Revised Sheet No. 1418.

DTI states that the purpose of this filing is to report several new negotiated rate transactions with twenty Appalachian pool operators on DTI's gathering system and an amendment to a previously reported negotiated rate transaction with Cabot Oil and Gas Marketing Corporation.

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 § 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. E5–8172 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–40–000]

Duke Energy Field Services, LP; Notice of Petition for a Declaratory Order

December 22, 2005.

Take notice that on December 16, 2005, Duke Energy Field Services, LP (DEFS), filed pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, a petition for a declaratory order. In its petition, DEFS requests the Commission to declare that certain Anadarko Basin area facilities to be purchased from Northern Natural Gas Company (Northern) perform a gathering function, and, upon their acquisition will be exempt from the Commission's jurisdiction pursuant to section 1(b) of the Natural Gas Act (NGA). The affected assets are Northern's Beaver Wet System, consisting of about 419 miles of Anadarko Basin area pipeline and related compression, dehydration, purification, and delivery point facilities and appurtenances, and DEFS will then simultaneously purchase Saleco from Northern. These facilities handle wet gas for delivery to processing plants and are in various counties in the Texas Panhandle, northwest Oklahoma, and southwest Kansas, all as more fully set forth in the request which is on file with Commission and open to public inspection.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 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 motion to intervene. All such motions or protests should be filed on or before the comment date and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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.

Comment Date: January 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8163 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–149–000]

Egan Hub Storage, LLC; Notice of Proposed Changes in FERC Gas Tariff

December 27, 2005.

Take notice that on December 20, 2005, Egan Hub Storage, LLC (Egan Hub) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Original Sheet No. 17, to designate a Rate Schedule FSS service agreement with Tennessee Valley Authority (the Service Agreement) as a non-conforming agreement. Egan Hub requests that the Commission accept the proposed tariff sheet, effective December 20, 2005.

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 § 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. E5–8181 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES06–21–000]

Entergy Louisiana, Inc.; Notice of Filing

December 27, 2005.

Take notice that on December 16, 2005, Entergy Louisiana, Inc. (ELI), on behalf of Entergy Louisiana, LLC (ELL), submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to:

(1) Issue units of preferred membership interest and, directly or indirectly, through one or more special purpose financing subsidiaries (Financing Subsidiaries), other forms of preferred or equity linked securities (Equity Interests), up to a combined aggregate amount of $200 million;

(2) Issue first mortgage bonds and unsecured long-term indebtedness, in a combined aggregate amount of up to $700 million;

(3) Issue in connection with the issuance of Equity Interests, to Financing Subsidiaries to the extent of the related issuance of Equity Interests and ELL's direct or indirect equity investments in such Financing Subsidiaries; and

(4) Issue tax-exempt bonds (Tax-exempt Bonds), through arrangements with one or more governmental authorities, in an aggregate principal amount of up to $500 million, including the remarketing of up to $165.95 million of previously issued Tax-exempt Bonds

currently held by ELI; and, in connection with the issuance and sale (or remarketing) of such Tax-exempt Bonds, to issue and pledge collateral bonds (first mortgage bonds issued as collateral security for such Tax-exempt Bonds) in an aggregate principal amount of up to $560 million (such $560 million is not included in the $700 million referenced in (2) above), and/or to arrange for bond insurance or one or more bank letters of credit, or enter into other arrangements, to support such Tax-exempt Bonds.

In addition, in connection with the formation of Financing Subsidiaries organized solely to facilitate the issuance of Equity Interests, authorization is requested for ELL to guarantee certain obligations of such Financing Subsidiaries in respect of such Equity Interests.

ELI also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

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 January 12, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8176 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–361–000]

Freeport LNG Development, L.P.; Notice of Availability of the Draft Conformity Determination for the Freeport LNG Project

December 22, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this Draft General Conformity Determination to assess the potential air quality impacts associated with the construction and operation of additional facilities proposed by Freeport LNG Development, L.P. (Freeport LNG) that would be installed at its authorized liquefied natural gas (LNG) terminal facilities on Quintana Island, Brazoria County, Texas.

This Draft General Conformity Determination was prepared to satisfy the requirements of the Clean Air Act.

Comment Procedures

Any person wishing to comment on this Draft General Conformity Determination may do so. To ensure consideration of your comments in the Final General Conformity Determination, 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;
- Reference Docket No. CP05–361–000;
- Label one copy of your comments for the attention of Gas Branch 2; PJ11.2; and
- Mail your comments so that they will be received in Washington, DC on or before February 7, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. The Commission strongly encourages electronic filing of any comments on this Draft General Conformity Determination. 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 online.

After all comments are reviewed, the staff will publish and distribute a Final General Conformity Determination for the Project.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8171 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–94–001]

Garden Banks Gas Pipeline, LLC; Notice of Compliance Filing

December 27, 2005.

Take notice that on December 15, 2005, Garden Banks Gas Pipeline, LLC (Garden Banks) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Substitute Revised Sheet No. 15; Second Substitute Revised Sheet No. 25 and Third Substitute Revised Sheet No. 34, to become effective December 15, 2005.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive 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. E5–8185 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05–4–000; RM05–4–001]

Interconnection for Wind Energy; Notice Extending Compliance Date

December 22, 2005.

On December 12, 2005, the Commission issued its order on rehearing and clarification in these proceedings. *Interconnection for Wind Energy*, Order No. 661–A, 70 FR 75005 (Dec. 19, 2005), 113 FERC ¶ 61,254 (2005); *see also Interconnection for Wind Energy*, Order No. 661, 70 FR 34993 (June 16, 2005), FERC Stats. & Regs. ¶ 31,186 (2005) (Final Rule). In Order No. 661–A, the Commission maintained a previously established date of December 30, 2005 as the date by which public utilities that own, control, or operate transmission facilities in interstate commerce are to adopt the tariff sheets in the Final Rule as amendments to the Large Generator Interconnection Procedures and Large Generator Interconnection Agreements in their Open Access Transmission Tariffs. Southern California Edison Company, California Independent System Operator Corporation, and San Diego Gas and Electric Company have each submitted motions asking that the December 30, 2005, compliance date be extended to January 18, 2006, the effective date of Order No. 661–A.

By this notice, the Commission hereby extends to January 18, 2006, the date by which public utilities that own, control, or operate transmission facilities in interstate commerce are to file the tariff sheets required by both the Final Rule and Order No. 661–A as amendments to the Large Generator Interconnection Procedures and Large Generator Interconnection Agreements in their Open Access Transmission Tariffs.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8170 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–151–000]

Kern River Gas Transmission Company; Notice of Filing of Revisions to Annual Fuel Reports

December 27, 2005.

Take notice that on December 21, 2005, Kern River Gas Transmission Company (Kern River) filed schedules showing prior-period adjustments to the gas compressor fuel and lost and unaccounted-for (L&U) gas balances reflected in the annual fuel reports submitted by Kern River for calendar years 2000 through 2004.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory 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 § 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. E5–8183 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–39–000]

Northern Natural Gas Company; Notice of Application for Abandonment

December 22, 2005.

Take notice that on December 16, 2005, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP06–39–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), for authorization to abandon, by sale, to Saleco, a yet to be named limited liability company, with the simultaneous transfer of Saleco to Duke Energy Field Services, LP (DEFS), following Saleco's acquisition of certain pipeline, compression, dehydrating, purification and delivery point facilities and appurtenances located in various counties in Texas, Oklahoma and Kansas. Northern also requests a Commission determination that following abandonment, the facilities will be non-jurisdictional gathering facilities pursuant to section 1(b) of the NGA. Finally, Northern requests Commission approval to abandon the services it provides with respect to primary receipt and/or delivery points located on the facilities proposed for abandonment, all as more fully set forth in the request which is on file with Commission and open to public inspection.

Specifically, Northern proposes to convey to Saleco, approximately 419 miles of its pipeline, compressor stations and all delivery and receipt points located along the length of the pipeline and all other appurtenant facilities. The facilities are referred to by Northern as the Beaver Wet System which handles wet gas for processing.

Any questions regarding this application should be directed to Michael T. Loeffler, Director of Certificates for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103.

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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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.

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.

Comment Date: January 12, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8162 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES06–19–000]

Portland General Electric Company; Notice of Filing

December 27, 2005.

Take notice that on December 13, 2005, Portland General Electric Company submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission authorize the issuance of short-term unsecured debt in an amount not to exceed $400 million outstanding at any one time.

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 January 12, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8175 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–41–000]

Regent Resources Ltd. and Sword Energy Limited; Notice of Application To Transfer Natural Gas Act Section 3 Authorization and Presidential Permit

December 27, 2005.

On December 19, 2005, Regent Resources Ltd. (Regent) and Sword Energy Limited (Sword) filed an application pursuant to section 3 of the Natural Gas Act (NGA) and section 153 of the Commission's Regulations and Executive Order No. 10485, as amended by Executive Order No. 12038, and the Secretary of Energy's Delegation Order No. 0204–112, seeking authorization to transfer Regent's existing NGA section 3 authorization and Presidential Permit to Sword, all as more fully set forth in the application which is on file with the Commission and open to the public for inspection. This filing is available for review at the Commission 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the application may be directed to: Shaun Hedges, Vice President, Operations, Regent Resources Ltd., 1200, 603–7th Avenue, SW., Calgary, Alberta T2P 2T5 or call (403) 298–5741 or Richard Mellis, Vice President, Land, Sword

Energy Limited, 3400, 205–5th Avenue, SW., Calgary, Alberta T2P 2V7 or call (403) 770–4824.

Specifically, Regent and Sword request the Commission to issue an order: (1) Transferring Regent's NGA section 3 authorization to Sword for the operation and maintenance of facilities for the importation of natural gas from the Province of Alberta, Canada, into Glacier County, Montana; and (2) authorizing the assignment of Regent's March 19, 2003, Presidential Permit for the operation and maintenance of facilities at the Alberta, Canada/Montana import point.

The import facilities consist of (1) a gas meter station in LSD 8–4–1–16 W4M in the Province of Alberta; (2) a 4-inch (114.3 mm) diameter pipeline located directly south of this meter station across the Canada-United States border at Section 1 T37N R5W, extending a distance of approximately 2,300 feet. The pipeline crosses the International Boundary for a distance of 30 feet (the Coutts Gas Export Pipeline) and interconnects with a 4-inch (114.3 mm) diameter pipeline (the Connector Pipeline) operated by Regent Resources Inc., a Montana incorporated company that is a wholly owned subsidiary of Regent Resources Ltd. The Connector Pipeline connects with an existing North Western-operated gathering system in northern Montana at SE. ¼ Section 8, Township 37N, Range 4W downstream of the North Western-operated North Moulton compressor station.

Regent and Sword state that the border facilities will remain in place and operation following the requested transfer and assignment. Regent and Sword also state that there are no current third party service agreements associated with the Regent pipeline, although Sword would be prepared to offer transportation services to any other shipper.

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, 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.

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: January 17, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8174 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–150–000]

Sea Robin Pipeline Company, LLC; Notice of Flowthrough Crediting Mechanism

December 27, 2005.

Take notice that on December 20, 2005, Sea Robin Pipeline Company, LLC (Sea Robin) submitted its Annual Flowthrough Crediting Mechanism Filing. Sea Robin states that this filing was made pursuant to section 22 of the general terms and conditions of Sea Robin's FERC Gas Tariff, which requires the crediting of certain amounts received as a result of resolving monthly imbalances between its gas and liquefiables shippers and under its operational balancing agreements as described in section 6 of its Tariff, and to accumulate amounts received as a result of imposing scheduling penalties as described in section 7 of its Tariff.

Sea Robin further states copies of this filing are being served on all jurisdictional customers, applicable state regulatory agencies and parties to 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 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 date as indicated below. 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.

Comment Date: 5 p.m. Eastern Time January 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8182 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–60–008]

Trunkline LNG Company, LLC; Notice of Compliance Filing

December 27, 2005.

Take notice that on December 15, 2005, Trunkline LNG Company, LLC (Trunkline LNG) submitted a compliance filing pursuant to the Commission's orders issued on August 27, 2002, December 18, 2002, and October 27, 2003 in Docket Nos. CP02–60–000, CP02–60–001 and CP02–60–003, respectively.

Trunkline LNG states that the compliance filing includes tariff sheets to place Rate Schedules FTS–2 and ITS–2 in service upon completion of the Amended Expansion Project.

Trunkline LNG states that copies of the filing were served on parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule

211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive 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.

Protest Date: 5 p.m. Eastern Time on January 12, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8187 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–147–000]

Wyoming Interstate Company, Ltd; Notice of Tariff Filing

December 27, 2005.

Take notice that on December 19, 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 January 16, 2006:

Fifth Revised Sheet No. 1,
Second Revised Sheet No. 103,
Second Revised Sheet No. 104,
First Revised Sheet No. 117.

WIC states that it is also filing three firm transportation service agreements (FTSAs), and two precedent agreements (PAs).

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. E5–8179 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatroy Commission

[Docket No. RP06–77–001]

Wyoming Interstate Company, Ltd.; Notice of Compliance Filing

December 27, 2005.

Take notice that on December 19, 2005, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No 2, Sixteenth Revised Sheet No. 4B, to be effective December 1, 2005.

WIC states that the tendered tariff sheet revises the FL&U reimbursement percentages applicable to transportation service on WIC's system.

WIC states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive 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. E5–8184 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–30–000]

California Electricity Oversight Board; People of the State of California, ex rel. Bill Lockyer, Attorney General, California Department of Water Resources v. Calpine Energy Services, LP., Calpine Corporation, Power Contract Financing, LLC. and Gilroy Energy Center, LLC.; Notice of Complaint; Notice of Complaint

December 22, 2005.

Take notice that on December 19, 2005, the California Electricity Oversight Board, the People of the State of California and the California Department of Water Resources (collectively, California State Parties), filed a complaint requesting Fast Tract Processing against Calpine Energy Services, LP., Calpine Corporation, Power Contract Financing, LLC., and Gilroy Energy Center, LLC., (collectively, Calpine). Specifically, California State Parties request the Commission to require Calpine to continue to provide service under a certain Master Power Purchase and Sale Agreement Amended and Restated Confirmation Letter until December 31, 2009.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 January 19, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8165 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–31–000]

Southern Illinois Power Cooperative, Complainant v. Midwest Independent Transmission System Operator, Inc., Respondent; Notice of Complaint

December 22, 2005.

Take notice that on December 20, 2005, Southern Illinois Power Cooperative filed a formal complaint against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e and Rule 206 of the Rules of Practice and Procedure of the Commission, 18 CFR 385.206, alleging that the Midwest ISO violates Commission Orders and its own Open Access Transmission and Energy markets Tariff regarding the treatment of carved out Grandfathered Agreements (GFAs) by charging Revenue Sufficiency Guarantee charges and revenue neutrality charges to carved-out GSAs.

Southern Illinois Power Cooperative certifies that copies of the complaint were served on the contracts for the Midwest ISO.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 January 9, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8166 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

COMBINED NOTICE OF FILINGS #1

December 27, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER00–2117–003; ER00–2118–003; ER00–3751–003; ER00–1828–003; ER93–493–015.

Applicants: ANP Bellingham Energy Company, LLC; ANP Blackstone Energy Company, LLC; ANP Funding I, LLC; ANP Marketing Company; Milford Power Limited Partnership.

Description: ANP Bellingham Co LLC et al submits updated market power analyses supporting their continued authorization to sell at market-based rates.

Filed Date: 12/14/2005.

Accession Number: 20051219–0353.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 04, 2006.

Docket Numbers: ER00–2398–008; ER99–3427–006.

Applicants: Baconton Power LLC; SOWEGA Power LLC.

Description: SOWEGA Power, LLC & Baconton Power, LLC submits their

combined second triennial updated market power analysis.

Filed Date: 12/14/2005.

Accession Number: 20051219–0285.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 04, 2006.

Docket Numbers: ER01–688–002.

Applicants: IPP Energy LLC.

Description: IPP Energy LLC submits its updated market power study and revisions to its Rate Schedule FERC No.1.

Filed Date: 12/13/2005.

Accession Number: 20051215–0059.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 3, 2006.

Docket Numbers: ER01–2398–012.

Applicants: Liberty Electric Power, LLC.

Description: Liberty Electric Power LLC submits a notice of non-material change in status in compliance with the reporting requirements adopted by FERC in Order 652.

Filed Date: 12/13/2005.

Accession Number: 20051215–0056.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 3, 2006.

Docket Numbers: ER03–198–005.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas & Electric Co submits its triennial market power analysis in support of its market-based authority tariff.

Filed Date: 12/09/2005.

Accession Number: 20051214–0178.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 3, 2006.

Docket Numbers: ER03–746–000; EL00–95–081; EL00–98–069.

Applicants: California Independent System Operator Corporation; San Diego Gas & Electric Co.; and California Power Exchange.

Description: California Independent System Operator Corp submits its Twenty-Third Status Report on Re-Run Activity including information re processing of offsets and schedule for completion of financial adjustment phase.

Filed Date: 12/12/2005.

Accession Number: 20051214–0166.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 3, 2006.

Docket Numbers: ER05–375–004; ER02–1582–005; ER02–2102–006; ER00–2885–007; ER01–2765–006.

Applicants: Arroyo Energy LP; Mohawk River Funding IV, L.L.C.; Utility Contract Funding, L.L.C.; Cedar Brakes I, L.L.C.; Cedar Brakes II, L.L.C.

Description: Arroyo Energy, LP et al submits an amended notice of non-material change in status.

Filed Date: 12/14/2005.

Accession Number: 20051219–0280.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 4, 2006.

Docket Numbers: ER05–1352–002; RT04–1–018; ER04–48–018.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits its compliance filing which provides revisions and clarifications to its Bylaws and Membership Agreement.

Filed Date: 12/12/2005.

Accession Number: 20051219–0286.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 3, 2006.

Docket Numbers: ER06–144–000.

Applicants: Progress Energy Service Company.

Description: Progress Energy Service Co's notice of withdrawal and request to terminate revised tariff sheets etc filed on 10/31/05.

Filed Date: 12/13/2005.

Accession Number: 20051219–0209.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 3, 2006.

Docket Numbers: ER06–315–000; ER05–1496–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp submits First Revised Interconnection and Local Service Agreement as agent for its affiliates Ohio Power Co and Columbus Southern Power Co.

Filed Date: 12/12/2005.

Accession Number: 20051214–0203.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 3, 2006.

Docket Numbers: ER06–316–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corp submits three revised service agreements with Manitowoc Public Utilities, Washington Island Electric Cooperative, and Upper Peninsula Power Co.

Filed Date: 12/12/2005.

Accession Number: 20051214–0204.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 3, 2006.

Docket Numbers: ER06–317–000.

Applicants: Southern Company Services, Inc.

Description: Southern Co Services Inc, agent for Alabama Power Co et al submits an amendment to Network Integration Transmission Service Agreement No. 467 with Generation Energy Marketing.

Filed Date: 12/13/2005.

Accession Number: 20051215–0061.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 3, 2006.

Docket Numbers: ER06–318–000.

Applicants: North American Energy Credit and Clearing.

Description: North American Energy Credit and Clearing submits its Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

Filed Date: 12/13/2005.

Accession Number: 20051215–0067.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 3, 2006.

Docket Numbers: ER06–319–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits revisions to Schedule 2 of the PJM Open Access Tariff to reflect Allegheny Energy Supply Co, LLC and Monongahela Power Co's revenue requirements etc.

Filed Date: 12/13/2005.

Accession Number: 20051215–0066.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 3, 2006.

Docket Numbers: ER06–321–000.

Applicants: Midwest ISO.

Description: Midwest ISO et al submits revisions to Module D of their Open Access Transmission & Energy Markets Tariff.

Filed Date: 12/14/2005.

Accession Number: 20051219–0281.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 4, 2006.

Docket Numbers: ER06–322–000.

Applicants: Progress Energy Service Company.

Description: Progress Energy Service Company, LLC, on behalf of Florida Power Corp dba Progress Energy Florida, Inc resubmits the Revised NERC Transmission Loading Relief Procedures to comply with FERC's 10/7/05 Order.

Filed Date: 12/13/2005.

Accession Number: 20051219–0282.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 3, 2006.

Docket Numbers: ER06–324–000.

Applicants: Progress Energy Service Company, LLC.

Description: Progrfess Energy Service Company, LLC on behalf of Carolina Power & Light Co dba Progress Energy Carolinas, Inc submits revisions to the Transmission Loading Relief Procedures and request a waiver of the 60 day notice requirement etc.

Filed Date: 12/13/2005.

Accession Number: 20051219–0283.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 3, 2006.

Docket Numbers: ER06–325–000.

Applicants: Central Maine Power Company.

Description: Central Maine Power Co petitions to terminate unexecuted local network service agreements with Mr. Israel Feldmus.

Filed Date: 12/14/2005.

Accession Number: 20051219–0279.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 04, 2006.

Docket Numbers: ER06–329–000.

Applicants: Cadillac Renewable Energy, LLC.

Description: Cadillac Renewable Energy LLC submits First Revised Sheet No. 2 et al to FERC Electric Tariff, First Revised Volume No. 1 to be effective 12/15/05.

Filed Date: 12/14/2005.

Accession Number: 20051219–0292.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 4, 2006.

Docket Numbers: ER06–334–000.

Applicants: New England Power Company.

Description: New England Power Co submits a Fourth Revised Service Agreement No. 23 between itself and the Narragansett Electric Co under its FERC Electric Tariff, Original Volume No. 1.

Filed Date: 12/14/2005.

Accession Number: 20051219–0295.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 4, 2006.

Docket Numbers: ER99–1004–006; ER00–2738–005; ER00–2740–005; ER01–1721–003; ER02–564–003; ER02–73–006; ER02–257–006.

Applicants: Entergy Nuclear Generation Company; Entergy Nuclear FitzPatrick, LLC; Entergy Nuclear Indian Point 3, LLC; Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Vermont Yankee, LLC; Llano Estacado Wind, LP; Northern Iowa Windpower LLC.

Description: Entergy Services, Inc et al. submits revisions to rate tariffs governing market-based capacity and energy sales in accordance with FERC's 12/17/04 Order.

Filed Date: 12/14/2005.

Accession Number: 20051220–0015.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 4, 2006.

Docket Numbers: ER99–830–014; ER04–925–006.

Applicants: Merrill Lynch Capital Services, Inc.

Description: Merril Lynch Commodities, Inc and Merrill Lynch Capital Services, Inc reports a change in the status in compliance with FERC's 1/20/99 et al Orders.

Filed Date: 12/14/2005.

Accession Number: 20051219–0287.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 4, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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. E5–8188 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

December 27, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER02–2001–000; ER99–3855–000; ER99–2928–000; ER99–2300–000.

Applicants: Cleco Power LLC; Cleco Evangeline LLC; Cleco Marketing & Trading LLC.

Description: Cleco Companies request an Extension of Time to Comply with EQR for Q1, Q2, and Q3 2005 etc. to identify and correct errors.

Filed Date: 12/16/2005.

Accession Number: 20051216–5093.

Comment Date: 5 p.m. Eastern Time on Friday, January 6, 2006.

Docket Numbers: ER05–1086–003.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits the Coordination Agreement with the New Brunswick System Operator Inc in compliance with FERC's 11/23/05 Letter Order.

Filed Date: 12/16/2005.

Accession Number: 20051221–0090.

Comment Date: 5 p.m. Eastern Time on Friday, January 6, 2006.

Docket Numbers: ER05–1362–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc submits the Facilities Construction Agreement among Prairie State Generator Co LLC, *et al.*

Filed Date: 12/15/2005.

Accession Number: 20051219–0277.

Comment Date: 5 p.m. Eastern Time on Thursday, January 5, 2006.

Docket Numbers: ER05–1475–003.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits a supplemental informational filing to its 9/12/05 filing proposing revisions to its Open Access Transmission and Energy Markets Tariff etc.

Filed Date: 12/15/2005.

Accession Number: 20051219–0293.

Comment Date: 5 p.m. Eastern Time on Thursday, January 5, 2006.

Docket Numbers: ER06–53–001.

Applicants: Alabama Power Company.

Description: Alabama Power Co's compliance filing of the Delivery Point Specification Sheet for the Utilities Board of the City of Foley dba Riveria Utilities' Seminole and Point Clear delivery points etc.

Filed Date: 12/16/2005.

Accession Number: 20051220–0045.

Comment Date: 5 p.m. Eastern Time on Friday, January 6, 2006.

Docket Numbers: ER06–195–001.

Applicants: K Road BG Management LLC.

Description: K Road BG Management, LLC submits an updated version of Sheet No. 3 of the market based rate tariff to reflect minor corrections.

Filed Date: 12/16/2005.
Accession Number: 20051221–0093.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 03, 2006.

Docket Numbers: ER06–327–000; OA06–2–000; ER06–328–000.
Applicants: Hardee Power Partners Limited; Tampa Electric Company.
Description: Hardee Power Partners Limited submits the Seventh Amendment dated 8/29/05 with Seminole Electric Cooperative, Inc to the agreement for sale and purchase of capacity and energy dated 7/27/89 etc.
Filed Date: 12/15/2005.
Accession Number: 20051219–0257.
Comment Date: 5 p.m. Eastern Time on Thursday, January 5, 2006.

Docket Numbers: ER06–330–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Services, Inc on behalf of Entergy Arkansas, Inc submits the Thirty-fifth Amendment to the Power Coordination, Interchange and Transmission Service Agreement with Arkansas Cooperative Corp.
Filed Date: 12/15/2005.
Accession Number: 20051219–0291.
Comment Date: 5 p.m. Eastern Time on Thursday, January 5, 2006.

Docket Numbers: ER06–331–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to its Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume No.1.
Filed Date: 12/15/2005.
Accession Number: 20051219–0290.
Comment Date: 5 p.m. Eastern Time on Thursday, January 5, 2006.

Docket Numbers: ER06–332–000.
Applicants: ISO New England Inc.
Description: ISO New England, Inc submits a copy of State Certification of the Massachusetts Department of Telecommunications & Energy designating all authorized persons to receive confidential Market Information etc.
Filed Date: 12/15/2005.
Accession Number: 20051219–0289.
Comment Date: 5 p.m. Eastern Time on Thursday, January 5, 2006.

Docket Numbers: ER06–333–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp submits Amendment No. 1 to the Interconnected Control Area Operating Agreement between ISO and Salt River Project Agricultural Improvement and Power District.
Filed Date: 12/15/2005.
Accession Number: 20051219–0337.
Comment Date: 5 p.m. Eastern Time on Thursday, January 5, 2006.

Docket Numbers: ER06–335–000.
Applicants: New York State Electric & Gas Corporation.
Description: New York State Electric & Gas Corp submits a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 4.
Filed Date: 12/15/2005.
Accession Number: 20051219–0276.
Comment Date: 5 p.m. Eastern Time on Thursday, January 5, 2006.

Docket Numbers: ER06–336–000.
Applicants: Aquila, Inc.
Description: Aquila, Inc on behalf of Aquila Networks–WPK et al. submits revisions to its existing market-based sales tariff and cost-based sales tariff etc.
Filed Date: 12/16/2005.
Accession Number: 20051220–0016.
Comment Date: 5 p.m. Eastern Time on Friday, January 6, 2006.

Docket Numbers: ER06–337–000.
Applicants: Midwest ISO.
Description: Midwest Independent Transmission System Operator, Inc submits a notice of cancellation for its Service Agreement for Network Integration Transmission Service, designated as Service Agreement No. 540 etc.
Filed Date: 12/16/2005.
Accession Number: 20051220–0010.
Comment Date: 5 p.m. Eastern Time on Friday, January 6, 2006.

Docket Numbers: ER06–338–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Co of New Mexico submits required ministerial changes to the pro forma Standard Large Generator Interconnection Procedures & Standard Large Generator Interconnection Agreement.
Filed Date: 12/16/2005.
Accession Number: 20051220–0011.
Comment Date: 5 p.m. Eastern Time on Friday, January 6, 2006.

Docket Numbers: ER06–339–000.
Applicants: Pacificorp.
Description: PacifiCorp submits 1st Revised Sheet No. 292 to PacifiCorp's 5th Revised Electric Tariff Volume No. 11.
Filed Date: 12/16/2005.
Accession Number: 20051220–0012.
Comment Date: 5 p.m. Eastern Time on Friday, January 6, 2006.

Docket Numbers: ER06–340–000.
Applicants: Kentucky Power Company.
Description: Kentucky Power Co submits a Cost-Based Formula Rate Agreement for Full Requirements Electric Service with the City of Vanceburg, Kentucky et al.
Filed Date: 12/16/2005.
Accession Number: 20051220–0013.
Comment Date: 5 p.m. Eastern Time on Friday, January 6, 2006.

Docket Numbers: ER06–341–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Co submits revised rate schedule sheets to First Revised Rate Schedules FERC No. 207 et al for the Must Run Service Agreement with California Independent System Operator Corp.
Filed Date: 12/16/2005.
Accession Number: 20051221–0031.
Comment Date: 5 p.m. Eastern Time on Friday, January 6, 2006.

Docket Numbers: ER06–342–000.
Applicants: Entergy Services, Inc. et al.
Description: Entergy Services, Inc, on behalf of Entergy Gulf States, Inc seeks acceptance of the EAI–EGS and EAI–EMI 2006 Bridge Contracts.
Filed Date: 12/16/2005.
Accession Number: 20051221–0030.
Comment Date: 5 p.m. Eastern Time on Friday, January 6, 2006.

Docket Numbers: ER06–352–000; ER05–375–000; ER02–1582–006; ER02–2102–007; ER00–2885–008; ER01–2765–007.
Applicants: CalBear Energy LP; Arroyo Energy LP; Mohawk River Funding, IV, LLC; Utility Contract Funding LLC; Cedar Brakes I, LLC; Cedar Brakes II, LLC.
Description: CalBear Energy, LP et al submits a notice of succession to notify FERC that as a result of a name change it has succeeded to the market-based rate schedule of Arroyo Energy LP.
Filed Date: 12/14/2005.
Accession Number: 20051223–0011.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 04, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

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Magalie R. Salas,

Secretary.

[FR Doc. E5–8189 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–29–000; Docket No. CP98–131–006]

Vector Pipeline, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Vector Compression Expansion Project and Request for Comments on Environmental Issues

December 22, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Vector Compression Expansion Project involving construction and operation of two new compressor stations by Vector Pipeline, LP (Vector) in Will County, Illinois and Macomb County, Michigan.[1] The total horsepower (hp) at the compressor stations would consist of about 45,000 hp of compression. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice (Vector) provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Vector is proposing in Docket No. CP06–29–000 to expand the transmission capacity of its existing interstate pipeline system by constructing two new compressor stations. Vector seeks authority to construct and operate:

- 15,000 hp of gas turbine-driven compression at the new Joliet Compressor Station in Will County, Illinois; and
- 30,000 hp of gas turbine-driven compression at the new Romeo Compressor Station in Macomb County, Michigan.

Vector also proposes in Docket No. CP98–131–006 to amend its existing Presidential Permit to transport gas between the United States and Canada by increasing the maximum capacity from 1,330 MMcfd to 2,300 MMcfd through the existing St. Clair River international border facilities. No additional border facilities would be constructed.

Vector indicates that Detroit Edison Company (Detroit Edison) would construct a 1,900-foot-long distribution line to provide "3-phase power" from the "existing DTE Facility" to the Romeo Compressor Station. Vector indicates that the "distribution line would be constructed adjacent to an existing ITC high voltage electric transmission line fee strip to minimize land requirements, potential private landowner concerns, and environmental impacts that may be associated with Detroit Edison's facilities." Vector indicates that water services would be provided by "Washington Township by extending the existing water line from the DTE Facility to the Romeo Compressor Station site. The water line would be about 1,900 feet in length and would be constructed adjacent to the existing ITC high voltage transmission line fee strip leading to the Romeo Compressor Station."

The location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 20.0 acres and 10.2 acres of land for the Joliet and Romeo Compressor Stations, respectively. Following construction, about 4.0 acres and 4.7 acres would be maintained as new aboveground facility sites for the Joliet and Romeo Compressor Stations, respectively.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

[1] Vector's applications in Docket Nos. CP98–131–006 and CP06–29–000 were filed with the Commission under section 3 of the Natural Gas Act and Part 157 of the Commission's regulations and section 7 of the Natural Gas Act, respectively.

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of all appendices, other than Appendix 1 (maps), are avaialble on the Commission's Web site at the "eLibrary" link or from the Commissions's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Hazardous waste
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Vector. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential noise levels at the noise-sensitive areas due to the operation of the compressor stations
- Conversion of about 3 acres of farm land to industrial use for the Joliet Compressor Station
- Potential impacts to Federal listed species: Indiana bat and prairie leaf clover

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. 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 letter 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 Gas Branch 2.
- Reference Docket No. CP06–29–000.
- Mail your comments so that they will be received in Washington, DC on or before January 23, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, 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.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or "intervenor". 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

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

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, 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.html.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/*

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

EventCalendar/EventsList.aspx along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8161 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions to Intervene

December 22, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Declaration of Intention.

b. Docket No: DI06–1–000.

c. Date Filed: November 23, 2005.

d. Applicant: Ice House Partners, Inc.

e. Name of Project: Ice House Project.

f. Location: The proposed Ice House Project will be located on the Nashua River, tributary to Merrimack River, in the city of Ayer, Middlesex County, Massachusetts.

g. Filed Pursuant to: Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Ms. Lisa Dowd, Ice House Partners, Inc., 323 West Main Street, Ayer, MA 01432; telephone: (978) 772–3303, fax: (978) 772–3441.

i. FERC Contact: Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov*.

j. Deadline for filing comments, protests, and/or motions: December 30, 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/or interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov*. Please include the docket number (DI06–1–000) on any comments, protests, and/or motions filed.

k. Description of Project: The proposed run-of-river Ice House Project would include: (1) An existing 300-foot-long, 12-foot-high log and plank dam with a concrete cap; (2) an impoundment of 965 acre-feet; (3) two electrically operated steel sluice gates; (4) a 45-foot-long, 25-foot-wide powerhouse containing two Canadian Hydro Components, 1.2 meter-wide-propeller-type open flume vertical turbines, each with a capacity of 135-kW; (5) a 300-foot-long transmission line; and (6) appurtenant facilities. The power would be used to power the Grady Research x-ray manufacturing facility. The proposed project will be connected to an interstate grid, and will not occupy any tribal or federal lands.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Locations of the Application: Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link, select "Docket#" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Mailing List: Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. 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.

o. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", AND/OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. 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 Applicant. 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 Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8164 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12629–000]

F & B Wood Corp.; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, Waiving Three Stage Consultation, and Establishing an Expedited Schedule for Relicensing and Deadline for Submission of Final Amendments

December 27, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* P–12629–000.

c. *Date filed:* December 7, 2005.

d. *Applicant:* F & B Wood Corp.

e. *Name of Project:* Corriveau Hydroelectric Project.

f. *Location:* On the Swift River, near the town of Mexico, Oxford County, Maine. This project does not occupy Federal lands.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Mr. James D. Sysko, Small Hydro East, 524 Jim's Drive, Newry, Maine 04261. (207) 824–3244.

i. *FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov* (202) 502–6093.

j. *Cooperating Agencies:* We are asking Federal, state, and local agencies

and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form a factual basis for complete analysis of the application on its merits, the resource agency, Indian tribe, or person must file a request for the study with the Commission no later than 60 days from the application filing date, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: February 6, 2006.

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.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eFiling" link. After logging into the eFiling system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process."

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The Corriveau Hydroelectric Project consists of the following existing facilities: (1) The 150-foot-long by 9-foot-high dam; (2) a 2.0 acre reservoir, (3) a 125-foot-long intake canal; (4) a powerhouse containing three generating units with total installed generating capacity of 338 kilowatts (kW); and (5) appurtenant facilities. The restored project would have an average annual generation of 1,306,900 kilowatt-hours. The dam and existing project facilities are owned by the applicant.

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be 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 filed to access the documents. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. 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.

q. With this notice, we are initiating consultation with the *Maine State Historic Preservation Officer (SHPO)*, as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

r. Procedural schedule and final amendments: We intend to waive the standard 3-stage consultation process (18 CFR 4.38). We also intend to substitute the pre-filing consultation that has occurred on this project for our standard National Environmental Policy Act scoping process. Commission staff proposes to issue a single environmental assessment rather than issue a draft and final EA. Staff intends to give at least 30 days for entities to comment on the EA, and will consider all comments received on the EA before final action is taken on the exemption application.

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. E5–8177 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

December 22, 2005.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are 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, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Date received	Presenter or requester
1. Project Nos. 2539–000 and 12522–000	12–7–05	Kristin LaChappelle.
2. Project Nos. 2539–000 and 12522–000	12–19–05	Sister Joanne St. Hilaire.
Exempt:		
1. CP04–411–000	12–16–05	David L. Scott.
2. CP05–412–000	12–16–05	Herman Der.
3. ER05–1522–000, ER05–1533–000	11–30–05	Hon. Arnold Schwarzenegger.
4. Project No. 2630–004	12–20–05	David Leonhardt.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8160 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Order on Intent To Revoke Market-Based Rate Authority

Issued December 22, 2005.

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly

In the matter of: ER02–2001–004, ER04–0292–000, ER04–0646–000, ER02–0388–000, ER03–0827–000, ER98–4301–000, ER02–1324–000, ER03–0182–000, ER03–0261–000, Electric Quarterly Reports, Bravo Energy Resources, LLC, Core Equities, Inc., HC Power Marketing, Maxim Energy Partners, LLC, Mountainview Power Company, Mt. Carmel Cogen, Inc., Phoenix Energy Associates, L.L.C., USP&G (Pennsylvania), Ltd.

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (2000), and 18 CFR part 35 (2005), require, among other things, that all rates, terms and conditions of jurisdictional services be filed with the Commission. In Order No. 2001, which established revised public utility filing requirements for rates, terms and conditions of jurisdictional services, the Commission required public utilities, including power marketers, to file, among other things, Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.[1]

2. Commission staff review of the Electric Quarterly Report submittals has revealed that a number of public utilities that previously had been granted authority to sell power at market-based rates have failed to file Electric Quarterly Reports in 2005. Accordingly, this order notifies those public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements.

3. In Order No. 2001, the Commission stated that,

> [i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.[2]

4. The Commission further stated that,

> [o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.[3]

5. Pursuant to these requirements, the Commission has revoked or withdrawn the market-based rate tariffs of several market-based rate sellers that failed to submit their Electric Quarterly Report.[4]

6. Commission staff review of the Electric Quarterly Report submittals has identified a number of public utilities that previously had been granted authority to sell power at market-based rates that have failed to file Electric Quarterly Reports. Commission staff has made a concerted effort to contact the non-filing utilities listed in the caption to remind them of their regulatory obligations. None of the public utilities listed in the caption of this order has met those obligations.[5]

7. Accordingly, this order notifies those public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the issuance of this order.

8. In addition, the above-captioned companies' failure to comply with their Electric Quarterly Report filing requirements provides a basis for the Commission to institute a proceeding under section 206 of the FPA, to determine whether these companies may continue to make wholesale power sales at market-based rates and whether any refunds would be appropriate. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA, as recently amended by section 1285 of the Energy Policy Act of 2005,[6] requires that the Commission establish a refund effective date that is no earlier than the date of publication of notice of its initiation of the investigation, but no later than five months subsequent to that date. Consistent with our general policy,[7] we will set the refund effective date as the date publication of notice of its initiation of the investigation.

9. In the event that any of the above-captioned market-based rate sellers have

[1] Revised Public Utility Filing Requirements, Order No. 2001, 67 Fed. Reg. 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002), reh'g denied, Order No. 2001–A, 100 FERC ¶ 61,074, reconsideration and clarification denied, Order No. 2001–B, 100 FERC ¶ 61,342, order directing filings, Order No. 2001–C, 101 FERC ¶ 61,314 (2002).

[2] Order No. 2001, at P 222.

[3] *Id.* at P 223.

[4] See Intent to Revoke Market-Based Rate Authority, 107 FERC ¶ 61,310 (2004); Notice of the Revocation of Market-Based Rate Tariffs, *et al.*, 69 Fed. Reg. 57,679 (September 27, 2004); Intent to Withdraw Market-Based Rate Authority, 104 FERC ¶ 61,139 (2003); and Order on Market-Based Rates, 105 FERC ¶ 61,219 (2003).

[5] According to the Commission's records, the companies subject to this order last filed their Electric Quarterly Reports in the quarters and years shown below:

Bravo Energy Resources, LLC, Docket No. ER04–0292–000, 2004, Quarter 3.

Core Equities, Inc., Docket No. ER04–0646–000, 2004, Quarter 3.

HC Power Marketing, Docket No. ER02–0388–000, 2003, Quarter 4.

Maxim Energy Partners, LLC, Docket No. ER03–0827–000, 2004, Quarter 1.

Mountainview Power Company, Docket No. ER98–4301–000, 2002, Quarter 4.

Mt. Carmel Cogen, Inc., Docket No. ER02–1324–000, 2002, Quarter 4.

Phoenix Energy Associates, L.L.C., Docket No. ER03–0182–000, 2004, Quarter 2.

USP&G (Pennsylvania), Ltd., Docket No. ER03–0261–000, 2003, Quarter 4.

[6] Energy Policy Act of 2005, Public Law No. 109–58, 119 Stat. 594 (2005).

[7] See, *e.g.*, Seminole Electric Cooperative, Inc. v. Florida Power & Light Co., 65 FERC ¶ 61,413 at 63,139 (1993); Canal Electric Co., 46 FERC ¶ 61,153 at 61,539, reh'g denied, 47 FERC ¶ 61,275 (1989).

already filed their required Electric Quarterly Reports in compliance with the Commission's requirements, its inclusion herein is inadvertent. Any such market-based rate seller is directed, within 15 days of the date of issuance of this order, to identify itself and provide details about its prior filings that establish that it complied with the Commission's Electric Quarterly Report filing requirements.

10. If any of the above-captioned market-based rate sellers does not wish to continue having market-based rate authority and does not foresee entering into any contracts to sell power at market-based rates, it may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel its market-based rate tariff and relieve it of its obligation to submit further Electric Quarterly Reports.

The Commission Orders

(A) Within 15 days of the date of issuance of this order, each public utility listed in the caption of this order shall file all delinquent Electric Quarterly Reports. If a public utility fails to make this filing, the Commission will revoke that public utility's authority to sell power at market-based rates and terminate its electric market-based rate tariff. Upon expiration of the filing deadline in this order, the Secretary shall promptly issue a notice, effective on the date of issuance, listing the public utilities whose tariffs have been revoked.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), the Commission hereby institutes a proceeding to determine whether the above-captioned companies may continue to make wholesale power sales at market-based rates and whether any refunds would be appropriate, as discussed in the body of this order.

(C) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8159 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL06–4–000]

Informal Staff Advice on Regulatory Requirements; Notice of New Docket Prefix "NL" and Guidelines for Filing Request for No-Action Letter

December 27, 2005.

On November 18, 2005, the Commission issued an *Interpretive Order Regarding No-Action Letter Process*[1] in Docket PL06–4–000. Notice is hereby given that the Commission has established a new docket prefix "NL" to identify issuances related to No-Action Letters.

The prefix will have the format NLFY–NNN–000, where "FY" stands for the fiscal year in which the request for No-Action Letter was received by the Commission and "NNN" is a sequential number.

The Commission is also issuing with this notice guidelines for filing requests for No-Action Letter. The guidelines are available on *http://www.ferc.gov* under the Documents and Filing tab.

Magalie R. Salas,

Secretary.

Filing Guidelines for Requests for No-Action Letter

What to Submit: Submit one original and two paper copies of the request, along with a text-searchable file (or files) on a 3¼" diskette or CD–ROM. Each page of the request and any supporting information or documents should include a header or footer stating "Request for No-Action Letter."

Contact Info: Each request must include the name, address, telephone number, and e-mail address of the person to whom the response should be directed.

Where to Submit: Send your request to: Federal Energy Regulatory Commission, Office of the General Counsel, Room 10A–01, ATTN: Request for No-Action Letter, 888 First Street, NE., Washington, DC 20426.

Use express mail or courier services to submit a Request for No-Action Letter to FERC. Regular mail sent through the US Postal Service to the Commission is subject to a 7–10 day delay for scanning. The scanning process also may destroy any diskettes and CD–ROMs included in the submittal.

The Commission determined that, at least initially, a Request for No-Action Letter is non-public material. The Commission's eFiling system is not ready to accept non-public material at this time and therefore, it is not available for the filing of requests for No-Action Letter.

[1] Interpretive Order Regarding No-Action Letter Process, 113 FERC ¶ 61,174 (2005).

[FR Doc. E5–8178 Filed 12–30–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2005–0553; FRL–8016–5]

Request for Nominations for a Human Studies Review Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Office of the Science Advisor (OSA) is soliciting nominations of qualified individuals to serve on a proposed Human Studies Review Board (HSRB). The Agency anticipates establishment of such a board to provide advice and recommendations on issues related to the scientific and ethical review of human subjects research. EPA was directed to establish such a Board pursuant to the 2006 EPA Appropriations Act and included such a Board in a proposed rule for protection of subjects in human research. See: "Department of Interior, Environment, and Related Agencies Appropriations Act, 2006", Public Law No. 109–54 and "Protections for Subjects in Human Research: Proposed Rule," 70 FR 53,838; September 12, 2005.

DATES: Nominations should be submitted to EPA no later than February 2, 2006.

ADDRESSES: Submit your nominations ("comments"), identified by Docket ID No. EPA–HQ–ORD–2005–0553, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *ORD.Docket@epa.gov.*
- Mail: ORD Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2005–0553. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your nominations to Docket ID No. EPA–HQ–ORD–2005–0553. EPA's policy is that all nominations received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the nomination 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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your nomination. If you send an e-mail nomination directly to EPA, without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the nomination that is placed in the public docket and made available on the Internet. If you submit a nomination electronically, EPA recommends that you include your name and other contact information in the body of your nomination and with any disk or CD–ROM you submit. If EPA cannot read your nomination due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider it. 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 docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD 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 legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Paul I. Lewis, Office of the Science Advisor, Mail Code 8105R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–8381 fax number: (202) 564–2070, e-mail: *lewis.paul@epa.gov*, or William Sette, Office of the Science Advisor, Mail Code 8105R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–0693, fax number: (202) 564–2070, e-mail: *sette.william@epa.gov.*

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human research on substances regulated by EPA or to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

C. What Should I Consider as I Prepare My Nomination for EPA?

You may find the following suggestions helpful for preparing your nomination:

1. Providing as much supporting information as possible about the nominee, including contact information.
2. Make sure to submit your nomination by the deadline in this document.
3. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date and **Federal Register** citation.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2005, the President signed into law the Department of Interior, Environment, and Related Agencies Appropriations Act, 2006, Public Law 109–54 (Appropriations Act), which provides appropriated funds for the Environmental Protection Agency and other Federal departments and agencies. Section 201 of the Appropriations Act includes the following provision:

> None of the funds made available by this Act may be used by the Administrator of the Environmental Protection Agency to accept, consider or rely on third-party intentional dosing human toxicity studies for pesticides, or to conduct intentional dosing human toxicity studies for pesticides until the Administrator issues a final rulemaking on this subject. The Administrator shall allow for a period of not less than 90 days for public comment on the Agency's proposed rule before issuing a final rule. Such rule shall not permit the use of pregnant women, infants or children as subjects; shall be consistent with the principles proposed in the 2004 report of the National Academy of Sciences on intentional human dosing and the principles of the Nuremberg Code with respect to human experimentation; and shall establish an independent Human Subjects Review Board. The final rule shall be issued no later than 180 days after enactment of this Act.

Consistent with the express Congressional directive, on September 12, 2005 (70 FR 53838), EPA published a Notice of Proposed Rulemaking (NPRM) regarding protections for subjects in human research and the establishment of the Human Studies Review Board (HSRB or Board).

Concurrent with this rulemaking process, EPA is reevaluating older registered pesticides with a goal of meeting the August 2006 deadline for completing the reregistration of pesticide active ingredients with food uses and the reassessment of tolerances mandated by section 408(q) of the FFDCA, as amended by the 1996 Food Quality Protection Act (FQPA) [Pub. L. 104–70]. In addition, EPA has received applications for registration or amended registration of pesticide products. Under the provisions of the Pesticide Registration Improvement Act (PRIA), EPA has deadlines by which it must make a decision whether to approve new applications for pesticide registrations or amendments to registrations.

EPA expects to issue the final rule in early 2006 after considering all public comments provided to the Agency. However, once the rule is finalized, there will be limited time between the establishment of the HSRB and the mandatory completion dates for tolerance reassessment and PRIA deadlines. Therefore, the Agency is initiating the actions necessary to enable a HSRB to begin reviewing completed

human research that would be relevant to pending reregistration, tolerance reassessment and new registration decisions, and in accordance with the provisions of the final rule. The first step toward establishing a HSRB is to solicit nominations for qualified individuals to serve on the HSRB for a review of intentional dosing human studies.

Process and Deadline for Submitting Nominations

Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for the HSRB. Additional avenues and resources may be utilized in the solicitation of nominees to encourage a broad pool of expertise. Nominees should be experts who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the ethical and/or scientific issues that may be considered by the HSRB. Nominees are requested who are nationally recognized experts in one or more of the following areas:

Biostatistics: expertise in statistical design and analysis of human subjects research studies.

Human toxicology: Expertise in pharmacokinetic and toxicokinetic studies, clinical trials, toxicology of cholinesterase inhibitors, and other classes of environmental substances.

Bioethics: Expertise in the ethics of research on human subjects; research ethics.

Human health risk assessment

To be considered, all nominations should include: a current curriculum vitae (C.V.) which provides the nominee's background, qualifications, relevant research experience and publications; and a brief biographical sketch ("biosketch"). The biosketch should be no longer than one page and should contain the following information for the nominee:

(a) Current professional affiliations and positions held;

(b) Area(s) of expertise, and research activities and publications relevant to the HSRB;

(c) Leadership positions in national associations or professional publications or other significant distinctions;

(d) Educational background, especially advanced degrees, including when and from which institutions these were granted.

The credentials of nominees received in reply to this notice will be compared to the specific expertise sought for the HSRB. Qualified nominees who agree to be further considered will be included in a smaller subset (known as the "Short List"). This subset will be posted on the OSA Web site *http://www.epa.gov/osa/index.htm* and will include, for each candidate, the nominee's name and their biosketch. Public comments will be accepted for 14 calendar days on the Short List. During this comment period, the public will be requested to provide relevant information or other documentation on nominees that OSA should consider in evaluating the candidates. Board members will be selected from the Short List.

The selection of experts to serve on the HSRB will be based on the function of the Board and the expertise needed. No interested candidates shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Other factors that will be considered during the selection process include availability of the potential Board member to fully participate in the Board's reviews, absence of any conflicts of interest, impartiality, independence with respect to the matters under review, and public comments to the Short List. Though financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the HSRB. Numerous qualified candidates may be identified. Therefore, selection decisions involve carefully weighing a number of factors including, but not limited to, the candidates' areas of expertise and professional qualifications, and responses to the Short List in achieving an overall balance of different perspectives on the Board.

If a prospective candidate for service on the HSRB is considered, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the HSRB candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48 [5–02]) which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. The EPA will evaluate the candidate's financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality, and no prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the HSRB.

Those who are selected from the pool of prospective candidates will be asked to attend public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before February 2, 2006. However, final selection of members is a discretionary function of the Agency. Nominations should be submitted by one of the methods listed under **ADDRESSES.**

Dated: December 22, 2005.

William H. Farland,

Chief Scientist, Office of the Science Advisor.

FR Doc. E5–8220 Filed 12–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8014–1]

Tribal Solid Waste Management Assistance Project: Request for Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal of Notice of Availability.

SUMMARY: This action withdraws the Tribal Solid Waste Interagency Workgroup announcement of the FY 06 Solicitation request for proposals of the Tribal Solid Waste Management Assistance Project (previously called the Open Dump Cleanup Project), published in the **Federal Register** Notice on Wednesday, November 23, 2005 (70 FR 70828). EPA is withdrawing the November 23, 2005 Notice of Availability because it has determined that it is necessary to make certain changes and clarifications to the funding solicitation contained therein. EPA will issue a revised solicitation in the near future. The revised solicitation will be published on the Internet at *http://www.epa.gov/tribalmsw* (click on the "Grants/Funding" link) and will also be available through *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: For general information contact, Christopher Dege, at (703) 308–2392 or Tonya Hawkins at (703) 308–8278.

Dated: December 9, 2005.

Matt Hale,

Director, Office of Solid Waste.

• Accordingly, the notice of funding availability published in the **Federal Register** on November 23, 2005 (70FR 70828) is withdrawn.

[FR Doc. 05–24425 Filed 12–30–05; 8:45 am]

BILLING CODE 6560–50–P

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 January 27, 2006.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. First Connecticut Bancorp, Inc., Farmington, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Farmington Savings Bank, Farmington, Connecticut.

B. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. New York Community Bancorp, Inc., and New York Community Newco, Inc., both of Westbury, New York; to acquire 100 percent of the voting shares of Atlantic Bank of New York, New York, New York.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Cullen/Frost Bankers, Inc., San Antonio, Texas, and The New Galveston Company, Wilmington, Delaware; to acquire 100 percent of the voting shares of Alamo Corporation of Texas, Alamo, Texas, and thereby indirectly acquire Alamo Corporation of Delaware, Wilmington, Delaware, and Alamo Bank of Texas, Alamo, Texas.

2. Mesquite Financial Services, Inc., Alice, Texas; to acquire 100 percent of the voting shares of Nichols Bancshares, Inc., Kenedy, Texas, and thereby indirectly acquire J M Nichols, Inc., Wilmington, Delaware, and First–Nichols National Bank, Kenedy, Texas.

Board of Governors of the Federal Reserve System, December 28, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–8194 Filed 12–30–05; 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 January 17, 2006.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. HSH Nordbank AG, Hamburg, Germany; to engage *de novo* through its subsidiary, HSH N Financial Securities LLC, New York, New York, in providing agency transactional services for customer investments, including securities brokerage, riskless principal transactions, private placement, and other transactional services, pursuant to sections 225.28(b)(7)(i),(ii),(iii), and (v) of Regulation Y.

Board of Governors of the Federal Reserve System, December 28, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–8193 Filed 12–30–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Acting Assistant Secretary for Health have taken final action in the following case: *Hans E. Geisler, M.D., Saint Vincent Hospital and Health Care Center:* Based on the report of an inquiry and investigation conducted by Saint Vincent Hospital (SVH) in Indianapolis, Indiana, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Hans E. Geisler, M.D., former Staff Physician and Principal Investigator for SVH's studies under the Gynecologic Oncology Group (GOG), engaged in scientific misconduct by soliciting a pathologist to falsify the originally correct tissue-type on the pathology report (omentum) as being another type (ovary) and submitting the falsified report to the

GOG group member at the University of Iowa, in order to justify enrollment of a patient in GOG clinical protocol 182.

The questioned research was supported by National Institutes of Health (NIH) funds to the University of Iowa through the American Society for Obstetrics and Gynecology under National Cancer Institute (NCI), National Institutes of Health (NIH), cooperative agreement U10 CA27469.

Dr. Geisler has entered into a Voluntary Exclusion Agreement (Agreement) in which he has voluntarily agreed, for a period of three (3) years, beginning on December 2, 2005:

(1) To exclude himself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as consultant; and

(2) That any institution which uses the Respondent in any capacity on PHS-supported research, or that submits an application for PHS support for a research project on which the Respondent's participation is proposed or submits a report of PHS-funded research in which the Respondent's participation is continuing, must concurrently submit a plan for supervision of the Respondent's duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of the Respondent's research contribution. A copy of the supervisory plan must also be submitted to ORI by the institution. Respondent agrees that he will not participate in any PHS-supported research until such a supervision plan is submitted to ORI.

Respondent disagrees with the ORI finding set forth herein but executes this Agreement to avoid further proceedings and bring this matter to a close. The execution of this Agreement shall not be deemed an admission to the charge of scientific misconduct by the Respondent.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. E5–8202 Filed 12–30–05; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Acting Assistant Secretary for Health have taken final action in the following case:

Ralph A. Highshaw, M.D., M.D. Anderson Cancer Center: Based on the report of an investigation conducted by the M.D. Anderson Cancer Center (MDACC) and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Ralph A. Highshaw, M.D., Fellow, Department of Urologic Surgery, MDACC, engaged in scientific misconduct while supported by National Cancer Institute (NCI), National Institutes of Health (NIH), postdoctoral training grant T32 CA079449–01A1.

Specifically, PHS found that Dr. Highshaw engaged in scientific misconduct by plagiarizing nine pages of a twenty-one page expert review article entitled "Chemoprevention of Urologic Cancer."

Dr. Highshaw has entered into a Voluntary Exclusion Agreement (Agreement) in which he has voluntarily agreed, for a period of three (3) years, beginning on December 12, 2005:

(1) That he is required to certify in every PHS research application or report, and any other text, article, or manuscript, that all contributors are properly cited or otherwise acknowledged; the certification by the Respondent must be endorsed by an institutional official, and a copy of the certification is to be sent to ORI by the institution;

(2) To ensure that any institution employing him submits, in conjunction with each application for PHS funds, annual reports, manuscripts, or abstracts of PHS funded research in which the Respondent is involved, a certification that the data provided by the Respondent are based on actual experiments or are otherwise legitimately derived, and that the data, procedures, and methodology are accurately reported in the application or report; the Respondent must ensure that the institution also sends a copy of the certification to ORI; and

(3) To exclude himself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. E5–8201 Filed 12–30–05; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Advisory Board on Radiation and Worker Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH) and Subcommittee for Dose Reconstruction and Site Profile Reviews.

Subcommittee Meeting Time and Date: 9 a.m.–5 p.m., January 24, 2006.

Committee Meeting Times and Dates: 8:30 a.m.–5 p.m., January 25, 2006. 8:30 a.m.–4:30 p.m., January 26, 2006.

Place: Doubletree Oak Ridge Hotel, 215 South Illinois Avenue, Oak Ridge, Tennessee, 37830, telephone (865) 481–2468, fax (865) 481–2474.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 75 people.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, delegated to the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed

for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on July 27, 2007.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the meeting includes Y–12 (1948–1957) SEC; NIOSH identified SEC classes; Site Profiles for Bethlehem Steel, Rocky Flats, and Savannah River Site; Letter from Steel Workers; SEC Rule rewrite; Task 3 Review of SC&A Contract; Report on additions to the list of 22 Cancers; Conflict of Interest; Dose Reconstruction Reviews; and an update on science issues. The evening public comment sessions are scheduled for January 24 from 5:30 p.m.–6:30 p.m. and January 25 from 7 p.m.–8:30 p.m.

The agenda is subject to change as priorities dictate. In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513–533–6825, fax 513–533–6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 27, 2005.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E5–8191 Filed 12–30–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH)

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following public meetings and request for information:

Name: NIOSH Opportunity to Provide Input for the National Occupational Research Agenda (NORA) with a special emphasis on the Agriculture, Forestry, and Fishing Sector, and the Health Care and Social Assistance Sector, with regional and multi-sector input.

Meeting Dates, Times, and Places: Agriculture, Forestry, and Fishing (AFF) Sector, Tuesday, January 17, 2006, 9 a.m.–5 p.m. pst, 9 a.m.–12 p.m. Multi-Sector Public Comments, 1 p.m.–5 p.m. AFF Specific Public Comments.

Museum of History and Industry (MOHAI, 2700 24th Avenue East, Seattle, WA 98112–2099. And HealthCare and Social Assistance Sector, Monday, January 23, 2006, 9 a.m.–5 p.m. cst, 9 a.m.–12 p.m. Multi-Sector Public Comments, 1 p.m.–5 p.m. HSA Specific Public Comments.

The University of Texas School of Public Health Auditorium, 1200 Herman Pressler, Houston, Texas 77030.

Status: Meetings are open to the public, limited only by the space available.

Background: A large part of our lives is shaped by the work we do. NORA is a framework to guide occupational safety and health research for the nation. It is an ongoing endeavor to focus research to reduce work-related injury and illness. As the program approaches a ten-year milestone, NIOSH is hosting public meetings to seek input from individuals and organizations on important research issues and agendas. Information about the public meetings and registration can be found on the NORA Web page at *http://www.cdc.gov/niosh/nora/townhall.*

Given that NORA represents a broad-based partnership involving government, business, the worker community, academia, and others, public input is essential for planning future directions for the initiative, which will be based on eight different industry sector groups. Each meeting will be structured to provide an opportunity for regional and multi-sector input during the morning, followed where appropriate by an afternoon session to focus on individual sector issues.

All participants are requested to register for the free meeting at the NORA Web page or onsite the day of the meeting. Participants wishing to speak are encouraged to register early. The public meetings are open to everyone, including all workers, professional societies, organized labor, employers, researchers, health professionals, government officials, and elected officials. Broad participation is desired.

Purpose: The public meetings will address both regional and sector-specific priorities for research. During the morning session, stakeholders will be invited to speak for 5 minutes on an important occupational safety and health issue, including those that occur in multiple sectors. Where noted in the agenda, the afternoon session will focus on sector-specific problems facing the nation. Again, participants will be asked to make 5-minute presentations describing what they perceive to be the top concerns within their sector or sub-sector. Participants are encouraged to attend both the regional and sector-specific sessions, or they may elect to participate in only one session.

Types of occupational safety and health issues might include diseases, injuries, exposures, populations at risk, and needs of occupational safety and health systems. For example, falls from heights might be a top injury issue for the residential construction industry. Low back pain and related back disorders might be a top disease concern for the urban transit industry. If possible, please include as much information as might be useful for understanding the safety or health research priority you identify. Such information could include characterization of the frequency and severity with which the injury, illness, or hazardous exposure is occurring and of the factors you believe might be causing the health or safety issue. Input is also requested on the types of research that you believe might make a difference and the partners (e.g., specific industry associations, labor organizations, research organizations, governmental agencies) who should be involved in informing research efforts and in solving the problem.

All presentations will be entered into the NORA Docket, which is maintained

by NIOSH. All comments in the NORA Docket will be used to help shape sector-specific and related cross-sector research agendas for the nation.

These events are part of a series of public meetings which will occur in the months preceding the NORA Symposium (April 18–20, 2006 in Washington, DC). Upcoming meetings will include: Wholesale and Retail Trade; Manufacturing; Mining; Services; Regional Issues; and a summary session. Future **Federal Register** announcements will provide more information on these meetings. Previous meetings have discussed Transportation, Warehousing, and Utilities, and Construction.

Contact Person for More Information: Sid Soderholm, Ph.D., NORA Coordinator, (202) 401–0721.

Address: Comments may also be e-mailed to *niocindocket@cdc.gov,* or sent via postal mail to: Docket NIOSH–047, Robert A. Taft Laboratories (C–34), 4676 Columbia Parkway, Cincinnati, OH 45226.

Stakeholders are also invited to submit comments electronically at the NORA Web page *http://www.cdc.gov/niosh/nora.* Comments submitted to the Web page by others can also be viewed there.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 27, 2005.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E5–8192 Filed 12–30–05; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0500]

Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements for Collection of Data Relating to the Prevention of Medical Gas Mixups at Health Care Facilities—Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on measures, taken by certain health care medical facilities that use medical oxygen, to prevent mixups with other gases.

DATES: Submit written or electronic comments on the collection of information by March 6, 2006.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, room 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Requirements for Collection of Data Relating to the Prevention of Medical Gas Mixups at Health Care Facilities—Survey (OMB Control Number 0910–0548)—Extension

FDA has received four reports of medical gas mixups occurring during the past 7 years. These reports were received from hospitals and nursing homes and involved 7 deaths and 15 injuries to patients who were thought to be receiving medical grade oxygen, but who were actually receiving a different gas (e.g., nitrogen, argon) that had been mistakenly connected to the facility's oxygen supply system. In 2001, FDA published guidance making recommendations to help hospitals, nursing homes, and other health care facilities avoid the tragedies that result from medical gas mixups and alerting these facilities to the hazards. This survey is intended to assess the degree of facilities' compliance with safety measures to prevent mixups and to determine if further steps are warranted to ensure the safety of patients.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
210 and 211	285	1	285	.25	71.25
Total					71.25

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 22, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–8113 Filed 12–30–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0220]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donor Testing, Donor Notification, and "Lookback"

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donor Testing, Donor Notification, and 'Lookback'" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 24, 2005 (70 FR 61447), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0116. The approval expires on December 31, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: December 22, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–8134 Filed 12–30–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

Translational Research Working Group Public Comment Period

AGENCY: National Cancer Institute (NCI), National Institutes of Health (NIH), Department of Health and Human Services (DHHS).

ACTION: Request for public comment.

SUMMARY: The Translational Research Working Group (TRWG), a broad panel including advocates, researchers from academia, industry representatives, and government officials, was established in early 2005 to evaluate the status of the National Cancer Institute's (NCI) intramural and extramural investment in translational research in order to develop recommendations on ways to coordinate and optimally integrate activities. The TRWG is also charged with developing implementation strategies that will enable the scientific community and NCI leadership to appropriately prioritize its translational research opportunities. Recommendations will be made to the National Cancer Advisory Board by early 2007. To assist in its future planning efforts, TRWG is asking public stakeholders in the translational research enterprise for feedback on some of the key questions facing the panel and insights on how to proceed.

DATES: The TRWG public comment period will run from December 20, 2005 to January 20, 2006.

ADDRESSES: Comments may be submitted electronically at the TRWG Web site: *http://www.cancer.gov/trwg/*.

SUPPLEMENTARY INFORMATION:

Background

The National Cancer Institute is committed to speeding the development of new diagnostic tests, cancer treatments, and other interventions that benefit people with cancer and people at risk for cancer. Such development relies on strong translational research collaborations between basic and clinical scientists to generate novel approaches. Currently, NCI supports a variety of projects that build this bridge between basic science and patient care.

Over the next year, the Translational Research Working Group (TRWG) will review NCI's current intramural and extramural translational research portfolio (within the scope of the TRWG mission), facilitate broad community input, invite public comment, and recommend ways to improve and integrate efforts. The ultimate goal is to accelerate progress toward improving the health of the nation and cancer patient outcomes.

Request for Comments

To better understand the different viewpoints in the cancer research community, and to develop and reflect a common understanding about the challenges and opportunities in translational research, TRWG seeks input on six important areas:

- Barriers to/Incentives for Translational Research.
- Prioritization.
- Funding.
- System Organization.
- Facilities/Technologies.
- Manpower/Training.

Dated: December 22, 2005.

Ernest Hawk,

Director, Office of Centers, Training and Resources, National Cancer Institute, National Institutes of Health.

[FR Doc. 05–24687 Filed 12–30–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–23339]

National Preparedness for Response Exercise Program

AGENCY: Coast Guard, DHS.

ACTION: Notice; request for public comment.

SUMMARY: The Coast Guard, the Pipeline and Hazardous Materials Safety Administration, the Environmental Protection Agency and the Minerals Management Service, in concert with representatives from various State governments, industry, environmental interest groups, and the general public, developed the National Preparedness for Response Exercise Program (PREP) Guidelines to reflect the consensus agreement of the entire oil spill response community. This notice announces the PREP triennial exercise cycle for 2006 through 2008, requests comments from the public, and requests industry participants to volunteer for scheduled PREP Area exercises. Additionally, this notice requests comments on the design and delivery of Government-led PREP exercises.

DATES: Comments and related material must reach the Docket Management Facility on or before March 6, 2006.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2005–23339 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *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. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, or need general information regarding the PREP or the triennial exercise schedule, contact Lieutenant Commander Mark Cunningham, Office of Response, Plans and Preparedness Division (G–MOR–2), U.S. Coast Guard, telephone 202–267–2877, fax 202–267–4065, or e-mail *MCunningham@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this notice by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2005–23339), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this triennial exercise schedule as well as other elements of the PREP in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the last five digits of the docket number. You may also visit the Docket Management Facility in Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Background and Purpose

In 1994, the United States Coast Guard (USCG) and the Research and Special Programs Administration (RSPA) of the Department of Transportation, the U.S. Environmental Protection Agency (EPA), and the Minerals Management Service (MMS) of the Department of the Interior, coordinated the development of the PREP Guidelines to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). The guiding principles for PREP distinguish between internal and external exercises. Internal exercises are conducted within the planholder's organization. External exercises extend beyond the planholder's organization to involve other members of the response community. External exercises are separated into two categories: area exercises, and Government-initiated, unannounced exercises. External exercises are designed to evaluate the entire pollution response mechanism in a given geographic area to ensure adequate response preparedness.

A National Schedule Coordination Committee (NSCC) was established for scheduling Area exercises. The NSCC is comprised of personnel representing the four Federal regulating agencies—the USCG, EPA, MMS, and PHMSA's Office of Pipeline Safety (OPS). Since 1994, the NSCC has published a triennial schedule of area exercises. Area exercises involve the entire response community including Federal, State, local, tribal, and non-government organizations, and industry participants; therefore, these area exercises require more extensive planning than other oil spill response exercises. The PREP Guidelines describe all of these exercises in more detail.

Source for PREP Documents

The Preparedness for Response Exercise Program (PREP) Area exercise schedule and exercise design manuals are available on the Internet at *http://www.uscg.mil/hq/nsfweb/nsfcc/prep/federalregister.html.* To obtain a hard copy of the exercise design manual, contact Ms. Melanie Barber at the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety at 202–366–4560. The 2002 PREP Guidelines booklet is available at no cost on the Internet at *http://www.uscg.mil/hq/nsfweb/nsfcc/prep/federalregister.html* or by writing or faxing the TASC DEPT Warehouse, 33141Q 75th Avenue, Landover, MD

20785, facsimile: 301–386–5394. The stock number of the manual is USCG–X0241. Please indicate the quantity when ordering. Quantities are limited to 10 per order.

PREP Schedule

Table 1 below lists the dates and **Federal Register** cites of past PREP exercise notices.

TABLE 1.—PAST PREP EXERCISE NOTICES

Date published	Federal Register cite	Notice
September 21, 2004	69 FR 56445	PREP triennial exercise schedule for 2005, 2006, and 2007.
February 5, 2004	69 FR 5562	Revision to PREP triennial exercise schedule for 2004, 2005, and 2006.
October 16, 2003	68 FR 59627	PREP triennial exercise schedule for 2004, 2005, and 2006.
October 30, 2002	67 FR 66189	PREP triennial exercise schedule for 2003, 2004, and 2005.
January 22, 2002	67 FR 2944	PREP triennial exercise schedule for 2002, 2003, and 2004.
February 9, 2001	66 FR 9744	PREP triennial exercise schedule for 2001, 2002, and 2003.
March 7, 2000	65 FR 12049	PREP triennial exercise schedule for 2000, 2001, and 2002.
June 15, 1999	64 FR 32090	PREP triennial exercise schedule for 1999, 2000, and 2001.
January 8, 1998	63 FR 1141	PREP triennial exercise schedule for 1998, 1999, and 2000.
March 26, 1997	62 FR 14494	PREP triennial exercise schedule for 1997, 1998, and 1999.
January 26, 1996	61 FR 2568	Correction to PREP triennial exercise schedule for 1996, 1997, and 1998.
November 13, 1995	60 FR 57050	PREP triennial exercise schedule for 1996, 1997, and 1998.
October 26, 1994	59 FR 53858	Revision to PREP triennial exercise schedule for 1995, 1996, and 1997.
March 25, 1994	59 FR 14254	PREP triennial exercise schedule for 1995, 1996, and 1997.

This notice announces the next triennial schedule of area exercises. The PREP schedule for calendar years 2006, 2007, and 2008 for Government-led and Industry-led Area exercises is available on the Internet at *http://www.uscg.mil/hq/nsfweb/nsfcc/prep/PREP%20CY2006–2008%20DRAFT.xls.* If a company wants to volunteer for an Area exercise, a company representative may call either the Coast Guard or EPA on-scene coordinator where the exercise is scheduled.

Design and Delivery of Government-Led PREP exercises

The National Strike Force Coordination Center (NSFCC) designs and coordinates the delivery of Government-led PREP exercises. If you have concerns or recommended improvements to the Government-led PREP exercises, please submit those using the procedures described under the **ADDRESSES** section of this notice. If sufficient interest exists, the NSFCC, in coordination with the NSCC, may hold a public workshop to determine improvements to the method in which they develop and deliver Government-led PREP exercises.

Dated: December 28, 2005.

Craig E. Bone,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. E5–8203 Filed 12–30–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–1998–3417]

RIN 1625–AA19 (Formerly RIN 2115–AF60)

Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of a draft Programmatic Environmental Assessment (PEA) on its proposal to clarify, and set new response time requirements for salvage and marine firefighting requirements in the vessel response plans for oil. We request your comments on the draft PEA.

DATES: Comments and related material must reach the Docket Management Facility on or before February 17, 2006.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–1998–3417 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *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. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, or the associated draft Programmatic Environmental Assessment, call Mr. Frank Esposito, Office of Environmental Law (G-LEL),

Coast Guard, telephone 202–267–0053, or e-mail *fesposito@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on the draft Programmatic Environmental Assessment. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–1998–3417), and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments and draft Programmatic Environmental Assessment: To view the comments and draft Programmatic Environmental Assessment, go to *http://dms.dot.gov* at any time, click on "Simple Search," enter the last four digits of the docket number for this notice, and click on "Search." You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received 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 the Department of Transportation's Privacy Act Statement as published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Proposed Action

The Coast Guard published a Notice of Proposed Rulemaking for "Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil" in the **Federal Register** on May 10, 2002 (67 FR 31868). Please refer to this Notice of Proposed Rulemaking for a summary of the regulatory history behind that Notice of Proposed Rulemaking. The Notice of Proposed Rulemaking is available in the DOT docket.

During the comment period on the Notice of Proposed Rulemaking, we received comments both in the docket and at public meetings challenging our reliance upon an environmental analysis done in 1992 to support the publication of the original vessel response plan requirements. These comments argued that it was old and out of date, and missing pieces that would be required of an Environmental Assessment done today. We reviewed those comments, as well as the old Environmental assessment/Finding of No Significant Impact, and determined that while the original study remains valid for the non-salvage portion of the vessel response plan we should conduct a new Environmental Analysis before finalizing the salvage and marine firefighting rulemaking.

Draft Programmatic Environmental Assessment

We have prepared a draft Programmatic Environmental Assessment. See "Viewing the comments and draft Programmatic Environmental Assessment" above. The draft Programmatic Environmental Assessment identifies and examines the reasonable alternatives and assesses their potential environmental impact.

We are requesting your comments on environmental concerns that you may have related to the Programmatic Environmental Assessment. This includes suggesting analyses and methodologies for use in the Programmatic Environmental Assessment or possible sources of data or information not included in the draft Programmatic Environmental Assessment. Your comments will be considered in preparing the final Programmatic Environmental Assessment.

Dated: December 27, 2005.

Craig E. Bone,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. E5–8200 Filed 12–30–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Collection of Information; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Office of Indian Education Programs is seeking comments on the renewal of the Information Collection Request for the Tribal Colleges and Universities Application for Grants, OMB No. 1076–0018, and the Annual Report Form, OMB No. 1076–0105, as required by the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before March 6, 2006.

ADDRESSES: Written comments should be sent directly to Edward Parisian, Bureau of Indian Affairs, Office of Indian Education Programs, 1849 C Street, NW., Mail Stop 3609-MIB Washington, DC 20240–0001. You may also send comments via facsimile to 202–208–3271.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the proposed information collection request from James C. Redman (202) 208–4397 or Keith Neves at (202) 208–3601.

SUPPLEMENTARY INFORMATION: Each Tribal College and University requesting financial assistance and receiving financial assistance is statutorily required to provide information to assess an accounting of amounts and purposes of financial assistance for the preceding academic year as provided for in 25 CFR part 41. The information collection is needed to collect an assessment of performance accountability of Federal funds as required by the Government Performance and Result Act of 1993.

Request for Comments

The Office of Indian Education Programs requests your comments on this collection concerning:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 3609, during the hours of 8 a.m. to 4:30 p.m., EST Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

Information Collection Abstract

OMB Control Number: 1076–0105.

Type of review: Renewal.

Title: Tribal Colleges and Universities Annual Report Form.

Brief Description of collection: The information is mandatory by Public Law 95–471 for the respondent to receive or maintain a benefit, specifically grants for students.

Respondents: Tribal College and University administrators.

Number of Respondents: 26.

Estimated Time per Response: 3 hours.

Frequency of Response: Annually.

Total Annual Burden to Respondents: 78.

Information Collection Abstract

OMB Control Number: 1076–0105.

Type of review: Renewal.

Title: Tribal Colleges and Universities Application for Grants Form.

Brief Description of collection: The information is mandatory by Public Law 95–471 for the respondent to receive or maintain a benefit, *i.e.*, grants for students.

Respondents: Tribal College and University administrators.

Number of Respondents: 26.

Estimated Time per Response: 1 hour.

Frequency of Response: Annually.

Total Annual Burden to Respondents: 26.

Dated: December 22, 2005.

Michael D. Olsen

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E5–8198 Filed 12–30–05; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Federal Outer Continental Shelf (OCS) Administrative Boundaries Extending from the Submerged Lands Act Boundary seaward to the Limit of the United States Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Setting Federal OCS offshore administrative boundaries beyond State submerged lands for Department of the Interior planning, coordination, and administrative purposes.

SUMMARY: This notice informs the public that the MMS has developed offshore administrative lines from each adjoining coastal state as described below. Having these lines in place provides various benefits, including:

1. Enhancing the Secretary's ability to ensure that the "4–C's"—communication, consultation and cooperation, all in support of conservation—are considered as she engages in efforts to identify which State has the most interest in the extended area offshore from its coastline because of the increasing number of commercial activities on the Federal OCS, such as permits for liquefied natural gas facilities, wind power, and wave energy;

2. Providing the basis for more accurate delineation of OCS planning areas;

3. Assisting in "affected State" status under the Coastal Zone Management Act and the OCS Lands Act. For example, section 18 of the OCS Lands Act requires the Secretary to consider the "laws, goals, and policies of affected States." Similarly, section 19 analysis requires the Secretary to balance national interests with the "well-being of the citizens of the affected State";

4. Providing a more accurate basis for the Secretary to consider support for, or objections to, a State's request to analyze leasing off its shores. Without such administrative lines, it is difficult to define these areas accurately;

5. Assisting in the section 18 comparative analysis to determine "an equitable sharing of developmental benefits and environmental risks among regions." Such lines will more accurately define the necessary assumptions of what are "regions"; and

6. Helping define appropriate consultation and information sharing with States. For example, section 19(e) authorizes cooperative agreement with affected States for such activities as information sharing, joint planning, review of plans, and environmental monitoring. This is even more important with the recent passage of the Energy Policy Act of 2005 which gave the MMS the authority to permit alternative and renewable energy projects on the OCS. Many of these projects will be located in areas in which the MMS has not recently been active.

FOR FURTHER INFORMATION CONTACT: Renee Orr, Chief, Leasing Division, telephone 703–787–1215.

SUPPLEMENTARY INFORMATION:

Background

The MMS undertook this task in light of the increasing number and type of both traditional and non-traditional energy, alternative energy-related, and other activities on the OCS. Such activities include sand and gravel dredging; liquefied natural gas handling facilities; wind, wave, and current energy generation projects; and mariculture, as well as other innovative uses of the sea, seabed, existing oil and gas operations, and OCS oil and gas infrastructure that may be pursued in the future. Therefore, the MMS believes that it is appropriate to delineate offshore administrative lines at this time.

Methodology

Over the past two years, the MMS, National Ocean Service, and Department of State have been updating the National Baseline which provides the basis for developing international jurisdictions, such as the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone, as well as a basis for the proposed boundaries seaward of the Submerged Lands Act state waters. We have used, to the extent practicable, the updated National Baseline to derive offshore administrative boundaries in compliance with accepted cartographic practice. The MMS has used the computational software known as CARIS LOTS "*Limits and Boundaries*." One of the many features of this software is that it takes a predetermined baseline and determines boundaries for states with an equidistant line for states that are adjacent or a median line for opposite states, based on geodetic calculations. This software was

specifically designed to meet international standards for calculating marine boundaries, including United Nations Convention on the Law of the Sea (UNCLOS) requirements.

For this purpose, we applied the widely accepted and long standing principle of equidistance. An equidistance line is one for which every point on the line is equidistant from the nearest points on the baselines being used. The equidistance principle is a methodology that has been endorsed by the UNCLOS treaty, but predates the treaty and has been used by the Supreme Court of the United States, states, and nations to equitably establish boundaries.

Early in its history, the U.S. used equidistance in the Act of 11 February 1805, 2 Stat. 313, that divided public lands by measurements as close as possible to "equidistant from those two corners which stand on the same line."

International law often refers to equidistance. Article 6 of the 1958 Geneva Convention on the Continental Shelf, ratified by the U.S. Senate on December 4, 1961, states:

> Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

Following U.S. ratification of the 1958 Geneva Convention, the Supreme Court has used equidistance to resolve disputes between states. In *Texas* v. *Louisiana,* the Court established a lateral boundary between Texas and Louisiana through the adoption of an equidistant line.

More recently, Congress has recognized the equidistance principle in ratifying a maritime boundary between the U.S. and Mexico for an area in the Gulf of Mexico over 200 miles from each country known as the Western Gap. This was the third treaty between these countries based on the equidistance principle.

The U.S. Baseline Committee has firmly established equidistance as the principle for domestic and international boundaries. The President formed the Committee in 1970 to resolve Federal baseline points from which to establish various jurisdictional and boundary issues, such as Federal/State boundary points and the extent of the territorial sea. The Committee has directed the Department of the Interior and all other agencies to apply this standard in dealings with coastal states and for international purposes.

The utilization of the equidistance principle to draw administrative boundaries within areas that are in purely Federal waters is the best means of achieving accurate, fair, and equitable boundary lines extending from states. These lines will help the Secretary and MMS in a variety of internal planning and extended (4C's) coordination purposes.

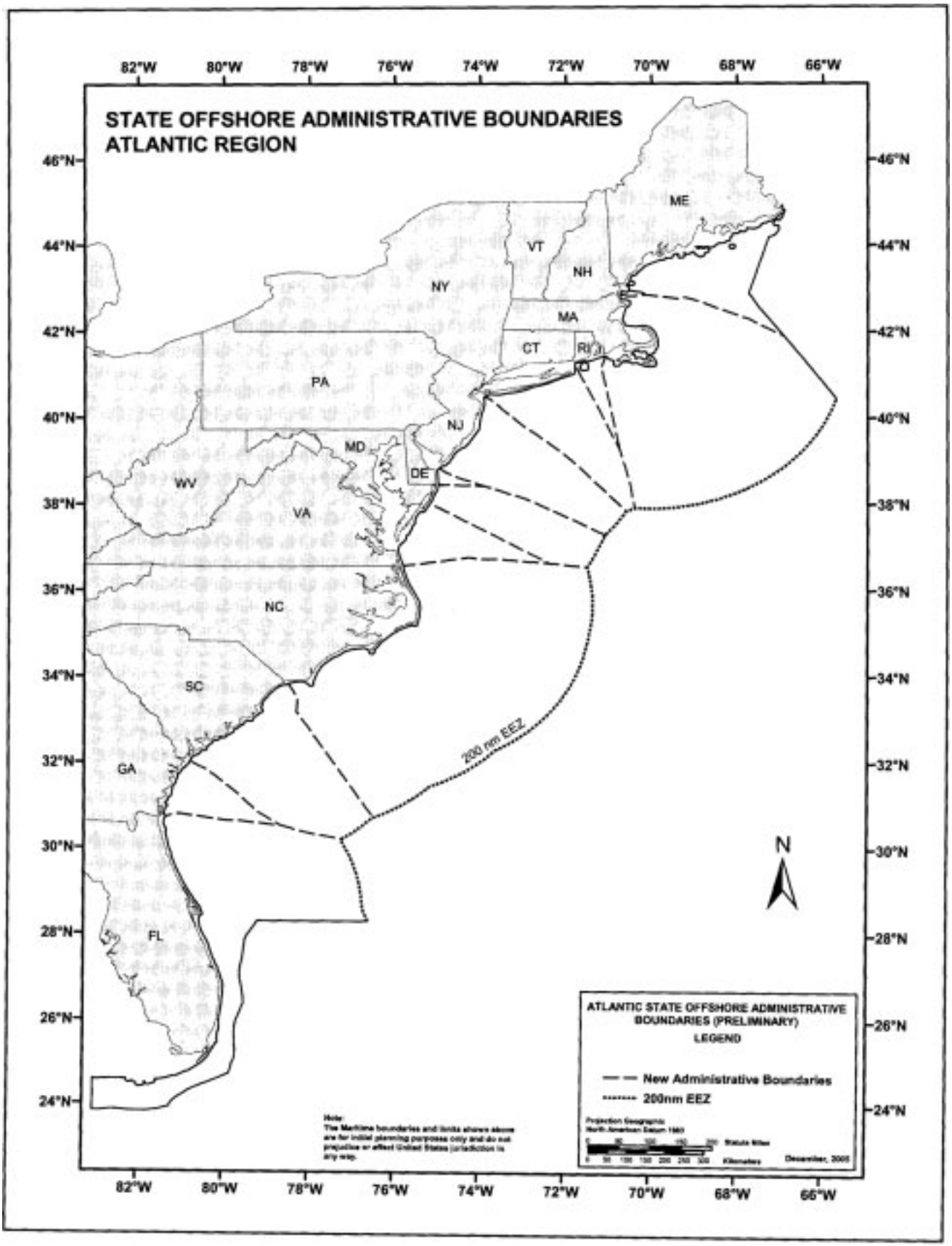
The extended equidistant lines extending from adjoining State baselines are depicted on the three maps that follow. More detailed information is available at the following Web site: *www.mms.gov/ld/lateral.htm.*

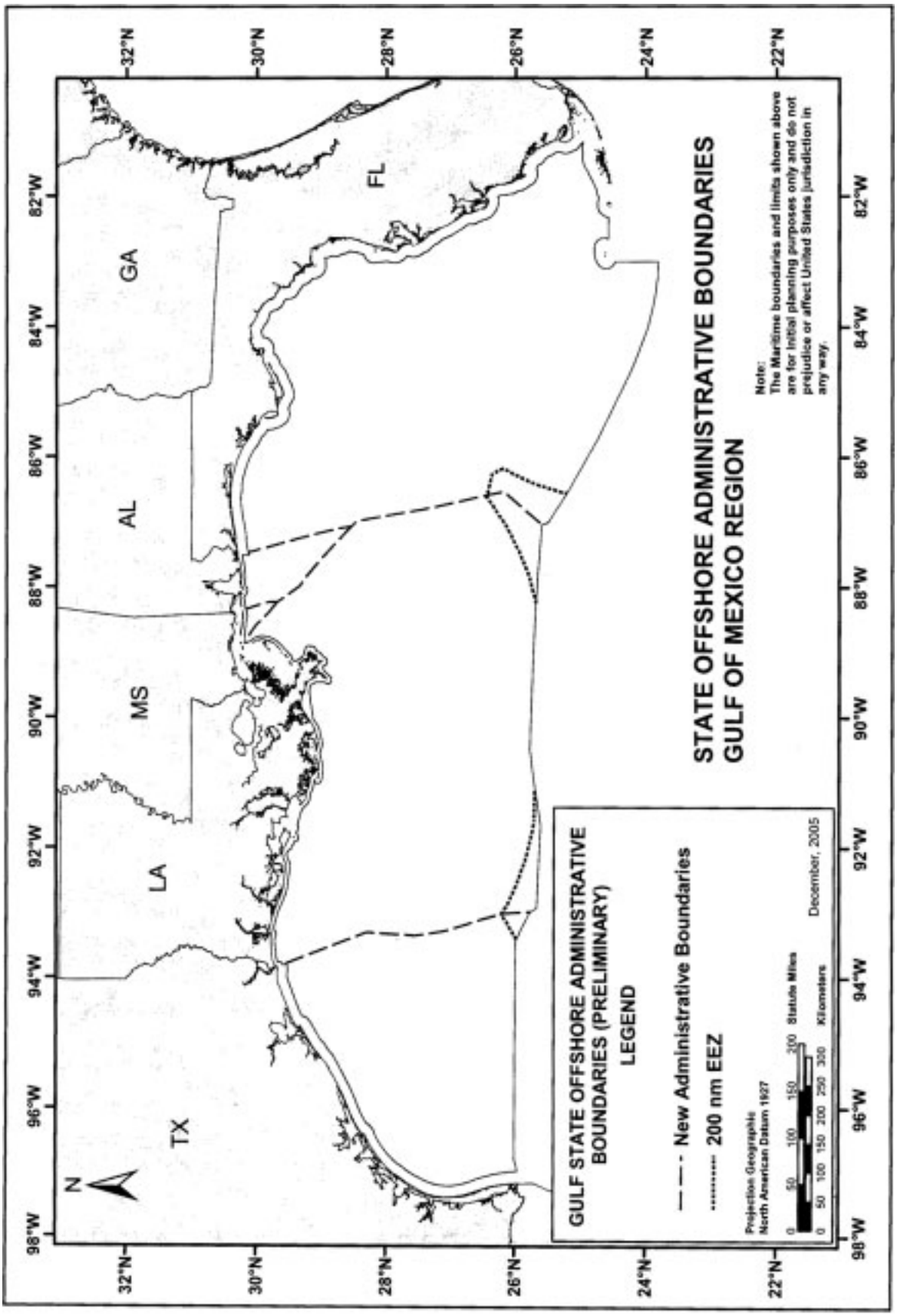
Dated: December 22, 2005.

Johnnie Burton,

Director, Minerals Management Service.

BILLING CODE 4310–MR–P


STATE OFFSHORE ADMINISTRATIVE BOUNDARIES
ATLANTIC REGION
82°W
80°W
78°W
76°W
74°W
72°W
70°W
68°W
66°W
46°N
44°N
42°N
40°N
38°N
36°N
34°N
32°N
30°N
28°N
26°N
24°N
ME
VT
NH
NY
MA
CT
RI
PA
NJ
MD
DE
WV
VA
NC
SC
GA
FL
200 nm EEZ
N
ATLANTIC STATE OFFSHORE ADMINISTRATIVE BOUNDARIES (PRELIMINARY)
LEGEND
New Administrative Boundaries
200nm EEZ
Projection Geographic
North American Datum 1983
Statute Miles
Kilometers
December, 2005
Note:
The Maritime boundaries and limits shown above are for initial planning purposes only and do not prejudice or affect United States jurisdiction in any way.


STATE OFFSHORE ADMINISTRATIVE BOUNDARIES
GULF OF MEXICO REGION
Note:
The Maritime boundaries and limits shown above are for initial planning purposes only and do not prejudice or affect United States jurisdiction in any way.
GULF STATE OFFSHORE ADMINISTRATIVE BOUNDARIES (PRELIMINARY)
LEGEND
New Administrative Boundaries
200 nm EEZ
Projection Geographic
North American Datum 1927
Statute Miles
Kilometers
December, 2005
FL
GA
AL
MS
LA
TX
N
32°N
30°N
28°N
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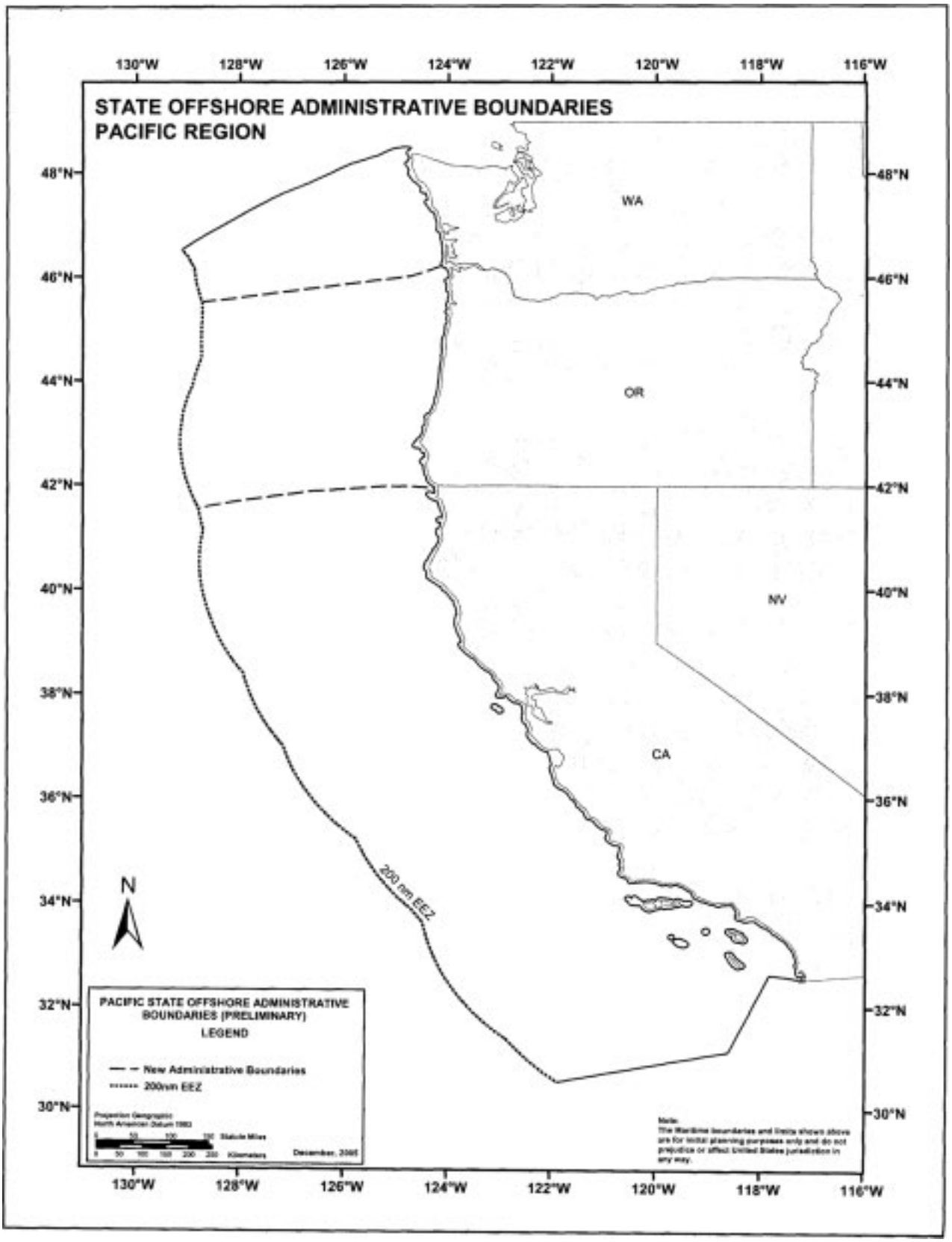
90°W
88°W
86°W
84°W
82°W



[FR Doc. 05–24659 Filed 12–30–05; 8:45 am]

BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

South Delta Improvements Program, Sacramento-San Joaquin Bay Delta, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change to public hearing schedule.

SUMMARY: The Notice of Availability of the Draft Environmental Impact Statement/Environmental Impact Report and notice of public meetings and hearings was published in the **Federal Register** on November 10, 2005 (70 FR 68475). The Bureau of Reclamation is correcting the public hearing dates from 2005 to 2006 and changing the dates, times, and locations.

DATES: The new public hearing dates and times are:

- January 24, 2006, 9 a.m. to 12 noon, Sacramento, CA.
- January 25, 2006, 10 a.m. to 12 noon, Los Angeles, CA.
- January 26, 2006, 7 p.m. to 9 p.m., Stockton, CA.

ADDRESSES: The public hearing locations are:

- California Bay Delta Authority, 650 Capitol Mall, Bay Delta Room, Sacramento, CA (proper identification required to enter building; no picture phones allowed.)
- Los Angeles County Metropolitan Transportation Authority, One Gateway, Los Angeles, CA.
- Department of General Services Auditorium, 31 East Channel Street, Stockton, CA.

FOR FURTHER INFORMATION CONTACT: Ms. Sammie Cervantes, Reclamation, at 916–978–5189, or e-mail: *scervantes@mp.usbr.gov*.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. E5–8190 Filed 12–30–05; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1099–1101 (Preliminary)]

Carbon and Certain Alloy Steel Wire Rod From China, Germany, and Turkey

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from China, Germany, and Turkey of carbon and certain alloy steel wire rod, provided for in subheadings 7213.91.30, 7213.91.45, 7213.91.60, 7213.99.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On November 10, 2005, a petition was filed with the Commission and the U.S. Department of Commerce by Connecticut Steel Corp., Wallingford, CT; Gerdau AmeriSteel U.S. Inc., Tampa, FL; Keystone Steel & Wire Company, Peoria, IL; Mittal Steel USA Georgetown, Georgetown, SC; and Rocky Mountain Steel Mills, Pueblo, CO, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of carbon and certain alloy steel wire rod from China, Germany, and Turkey. Accordingly, effective November 10, 2005, the Commission instituted antidumping duty investigation Nos. 731-TA–1099–1101 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 18, 2005 (70 FR 69988). The conference was held in Washington, DC, on December 1, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rule of Practice and Procedure (19 CFR 207.2(f)).

The Commission will transmit its determinations in these investigations to the Secretary of Commerce on January 4, 2006. The views of the Commission will be contained in USITC Publication 3832 (January 2006), entitled Carbon and Certain Alloy Steel Wire Rod from China, Germany, and Turkey: Investigation Nos. 731–TA–1099–1101 (Preliminary).

Issued: December 27, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–8207 Filed 12–30–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–552]

Certain Flash Memory Devices, and Components Thereof, and Products Containing Such Devices and Components; Notice of Commission Decision Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") issued by the presiding administrative law judge ("ALJ") granting complainant's motion to amend the complaint by adding claim 5 of U.S. Patent No. 5,150,178 to the investigation.

FOR FURTHER INFORMATION CONTACT: Steven Crabb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of non-confidential documents filed in connection with this investigation are or will be 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., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by

contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted by the Commission on October 31, 2005, based on a complaint filed by Toshiba Corporation of Tokyo, Japan ("Toshiba") under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337. 70 FR 67192–193 (November 4, 2005). The complainant alleged violations of section 337 in the importation and sale of certain flash memory devices and components thereof, and products containing such devices and components, by reason of infringement of claims 1–4 of U.S. Patent No. 5,150,178, claims 1 and 6–7 of U.S. Patent No. 5,270,969, and claims 1 and 4 of U.S. Patent No. 5,517,449. The complainant named Hynix Semiconductor of Ichon-si, Republic of Korea, and Hynix Semiconductor America, Inc. of San Jose, California (collectively "Hynix") as respondents.

On November 21, 2005, Complainant Toshiba motioned for leave to amend the complaint to add claim 5 of U.S. Patent No. 5,150,178. On December 1, 2005, Hynix and the Investigative Attorney ("IA") filed responses to the motion. Hynix did not oppose the motion, and the IA supported the motion. On December 2, 2005, the ALJ issued an ID (Order No. 4) granting Complainant Toshiba's motion to amend the complainant. The Commission has determined not to review this ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

Issued: December 28, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–8208 Filed 12–30–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–624 and 625 (Second Review)]

Helical Spring Lock Washers From China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on helical spring lock washers from China and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on helical spring lock washers from China and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is February 22, 2006. Comments on the adequacy of responses may be filed with the Commission by March 20, 2006. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On June 28, 1993, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of helical spring lock washers from Taiwan (58 FR 34567). On October 19, 1993, Commerce issued an antidumping duty order on imports of helical spring lock washers from China (58 FR 53914). Following five-year reviews by Commerce and the Commission, effective February 23, 2001, Commerce issued a continuation of the antidumping duty orders on imports of helical spring lock washers from China and Taiwan (66 FR 11255). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and its full five-year review determinations, the Commission defined the *Domestic Like Product* as helical spring lock washers of all sizes and metals.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its full five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of helical spring lock washers.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 06–5–142, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 22, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 20, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1999.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/

worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Countries*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Countries*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 1999, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: December 22, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–24584 Filed 12–30–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–671–673 (Second Review)]

Silicomanganese From Brazil, China, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is February 22, 2006. Comments on the adequacy of responses may be filed with the Commission by March 20, 2006. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On October 31, 1994, the Department of Commerce ("Commerce") suspended an antidumping duty investigation on imports of silicomanganese from Ukraine (59 FR

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 06–5–143, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

60951, November 29, 1994). On December 22, 1994, Commerce issued antidumping duty orders on imports of silicomanganese from Brazil and China (59 FR 66003). Following five-year reviews by Commerce and the Commission, effective February 16, 2001, Commerce issued a continuation of the antidumping duty orders on imports of silicomanganese from Brazil and China and the suspended investigation on imports of silicomanganese from Ukraine (66 FR 10669). On July 19, 2001, the Government of Ukraine requested termination of the suspension agreement on silicomanganese from Ukraine and, effective September 17, 2001, Commerce issued an antidumping duty order (66 FR 43838, August 21, 2001). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Brazil, China, and Ukraine.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations and its full five-year review determinations, the Commission defined the *Domestic Like Product* as all silicomanganese.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its full five-year review determinations, the Commission defined the *Domestic Industry* as domestic producers of silicomanganese.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 22, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 20, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification

(or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1999.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Countries,* provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Countries,* provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Countries* after 1999, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: December 22, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–24587 Filed 12–30–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–471 and 472 (Second Review)]

Silicon Metal From Brazil and China

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on silicon metal from Brazil and China.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on silicon metal from Brazil and China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is February 22, 2006. Comments on the adequacy of responses may be filed with the Commission by March 20, 2006. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: *Background.* On June 10, 1991, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of silicon metal from China (56 FR 26649). On July 31, 1991, Commerce issued an antidumping duty order on imports of silicon metal from Brazil (56 FR 36135). Following five-year reviews by Commerce and the Commission, effective February 16, 2001, Commerce issued a continuation of the antidumping duty orders on imports of silicon metal from Brazil and China (66 FR 10669). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determination in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Brazil and China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission defined the *Domestic Like Product* as silicon metal, regardless of grade, having a silicon content of at least 96.00 percent but less than 99.99 percent of silicon by weight, and excluding semiconductor grade silicon, corresponding to Commerce's scope. In its full five-year review determinations, the Commission defined the *Domestic Like Product* as all silicon metal, regardless of grade, corresponding to Commerce's scope. For purposes of this notice, you should report information on all silicon metal, regardless of grade, corresponding to Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all producers of the *Domestic Like Product*. In its full five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of silicon metal. For purposes of this notice, you should report information for all domestic producers of silicon metal.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed, the OMB number is 3117–0016/USITC No. 06–5–144, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 22, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 20, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1999.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in gross short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from each *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in gross short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Countries*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in gross short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 1999, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: December 22, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–24586 Filed 12–30–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–865–867 (Review)]

Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on stainless steel butt-weld pipe fittings from Italy, Malaysia, and the Philippines.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on stainless steel butt-weld pipe fittings from Italy, Malaysia, and the Philippines would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is February 22, 2006. Comments on the adequacy of responses may be filed with the Commission by March 20, 2006. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: January 3, 2006.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 06–5–145, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On February 23, 2001, the Department of Commerce ("Commerce") issued antidumping duty orders on imports of stainless steel butt-weld pipe fittings from Italy, Malaysia, and the Philippines (66 FR 11257). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Italy, Malaysia, and the Philippines.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined the *Domestic Like Product* as all finished and unfinished butt-weld fittings having an outside diameter (based on nominal pipe size) of less than 14 inches, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like*

Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all domestic producers of the *Domestic Like Product.*

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the *Order Date* is February 23, 2001.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post-employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 22, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 20, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to Be provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of

subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from each *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Countries*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: December 22, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–24585 Filed 12–30–05; 8:45 am]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

[AAG/A Order No. 020–2005]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice proposes to modify a Departmentwide system of records entitled "Accounting Systems for the Department of Justice (DOJ), DOJ–001." This system of records was last published on June 3, 2004 at 69 FR 31406. The major modification of the system involves the addition of certain Federal Bureau of Investigation (FBI) accounting records resulting in a new security classification. The system now contains classified documents as well as Sensitive But Unclassified (SBU) documents. Other modifications include: Minor edits to the Safeguards section regarding access; a new system manager for the Justice Management Division; additions to the Categories of Individuals Covered by the System; an addition to the Categories of Records in the System; and a minor correction to the section on Disclosure to Consumer Reporting Agencies, and non-substantive edits.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on this notice; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by February 13, 2006. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: December 15, 2005.

Paul R. Corts,

Assistant Attorney General for Administration.

Department of Justice—001

SYSTEM NAME:

Accounting Systems for the Department of Justice (DOJ).

SECURITY CLASSIFICATION:

The DOJ Accounting Systems may be Sensitive But Unclassified (SBU) or Classified.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals/persons (including DOJ employees; and including current and former inmates under the custody of the Attorney General) who are in a relationship, or who seek a relationship, with the DOJ or a component thereof—a relationship that may give rise to an accounts receivable, an accounts payable, or to similar accounts such as those resulting from a grantee/grantor relationship; and federal debtors, including those who have received overpayments through direct financial assistance, those who owe debts of restitution based on civil or criminal judgments entered by federal courts, and those who have obtained insured or guaranteed loans from federal agencies, and whose delinquent debts have been sent by client federal agencies to the DOJ for enforced collection through litigation. Included may be:

(a) * * *

(b) * * *

(c) * * *

(d) * * *

(e) Those who have made partial or full payments to be applied to their federal debt.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) All documents used to reserve, obligate, process, and effect collection or payment of funds, *e.g.*, vouchers (excluding payroll vouchers), invoices, purchase orders, travel advances, travel/transfer vouchers and other such documentation reflecting information about: (a) Payments due or made to, (b) claims made or debts owed by the individuals covered by this system, including fees, fines, penalties, overpayments, and/or other assessments; all documents used to comply with reporting regulations of the Internal Revenue Service of the Department of Treasury; and (3) all documentation and information pertaining to the receipt of payments made by or on the behalf of federal debtors against their debts and the disbursement or transfer of those payments by DOJ to the appropriate recipients.

* * * * *

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Only as noted in Routine Use 20(b) and Routine Use 23 in the **Federal Register** notice of June 3, 2004 (69 FR 31406).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

SAFEGUARDS:

All data will be protected in accordance with applicable DOJ and federal guidance, policies, and directives based on the security classification of the information/system. Access is limited to DOJ personnel with a need to know. Access to computerized information is controlled by passwords, or similar safeguards, which are issued only to authorized personnel. Records are retained in the form of digitized images on a server to which limited workstations have access. Passwords control access to the server from these workstations. Paper records, and some computerized media, are kept in locked files of locked offices during off duty hours. In addition, servers, workstations, and offices are located in controlled-access buildings.

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SYSTEM MANAGER(S) AND ADDRESSES:

DAAG/Controller, Finance Staff, Justice Management Division (JMD), U.S. Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530.

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[FR Doc. E5–8199 Filed 12–30–05; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Approval for Missouri for Avoidance of 2005 Credit Reduction Under the Federal Unemployment Tax Act

Sections 3302(c)(2) and 3302(d)(3) of the Federal Unemployment Tax Act (FUTA) provide that employers in a state that has an outstanding balance of advances under Title XII of the Social Security Act on January 1 of two or more consecutive years are subject to a reduction in credits otherwise available against the FUTA tax for a calendar year, if a balance of advances remains on November 10 of that year. Because the account of Missouri in the Unemployment Trust Fund had a balance of advances on both January 1, 2004, and January 1, 2005, and still had a balance on November 10, 2005, Missouri employers were potentially liable for a reduction in their FUTA offset credit for 2005.

Section 3302(g) of FUTA provides that a state may avoid credit reduction for a year by meeting certain criteria. Missouri applied for avoidance of the 2005 credit reduction under this section. Pursuant to delegation of authority to me under Secretary's Order 4–75, I have determined that Missouri meets all of the criteria of this section 3302(g) and thus qualifies for credit reduction avoidance. Therefore, Missouri employers will have no reduction in FUTA offset credit for calendar year 2005.

Dated: December 20, 2005.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 05–24681 Filed 12–30–05; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE BOARD

Programs and Plans Committee; Notice of Meeting

Date and Time: January 9, 2006, 10 a.m.–11 a.m. (ET)

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Public Meeting Room 365.

Status: This meeting will be open to the public.

Matters To Be Considered:

Monday, January 9, 2006, Open Session

Open Session (10 a.m.–11 a.m.)

- Committee review of NSF draft Cyberinfrastructure Vision document
- Committee discussion and comments

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Crosby, Executive Officer and NSB Office Director, (703) 292–7000, *http://www.nsf.gov/nsb.*

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. E5–8216 Filed 12–30–05; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271; License No. DPR–28]

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a petition dated May 3, 2005, filed pursuant to Title 10 of the *Code of Federal Regulations* (CFR), section 2.206, by Mr. Raymond Shadis on behalf of the New England Coalition (NEC), hereinafter referred to as the "Petitioner." The petition was supplemented on May 17, 2005. The petition concerns the use of the Hemyc electric raceway fire barrier system (EFRBS) at Vermont Yankee Nuclear Generating Station (Vermont Yankee).

NRC Information Notice 2005–07, "Results of Hemyc Electrical Raceway Fire Barrier System [ERFBS] Full Scale Fire Testing," dated April 1, 2005, informed the operators of nuclear power plants that the Hemyc ERFBS did not perform for one hour as designed. The NRC listed Vermont Yankee Nuclear Power Station (Vermont Yankee) among the sites that had installed Hemyc ERFBS. The NEC petition requested that the NRC promptly restore reasonable assurance of adequate protection of public health and safety with regard to the fire barriers in electrical cable protection systems at Vermont Yankee, or otherwise to order a derate of Vermont Yankee until such time as the operability of the fire barriers can be assured. Specifically, the petition requested that the Commission take the following actions: (1) Require Entergy Nuclear Vermont Yankee (ENVY) to promptly conduct a review at Vermont Yankee to determine the extent of condition, including a full inventory of the type, amount, application, and placement of Hemyc, and an assessment of the safety significance of each application; (2) require ENVY to promptly provide justification for operation in nonconformance with 10 CFR Part 50, Appendix R; and (3) upon finding that Vermont Yankee is operating in an unanalyzed condition and/or that assurance of public health and safety is degraded, promptly order a power reduction (derate) of Vermont Yankee until such time as it can be demonstrated that ENVY is operating in conformance with 10 CFR Part 50, Appendix R, and all other applicable regulations.

Mr. Raymond Shadis, in his capacity as the petitioner's Staff Technical Advisor, participated in a telephone conference call with the NRC's Petition Review Board (PRB) on May 17, 2005, to discuss the petition. The results of that discussion were considered in the PRB's determination regarding the Petitioner's request for action and in establishing the schedule for the review of the petition. During the May 17, 2005, PRB conference call, the Petitioner requested that the licensee review fire barriers beyond the Hemyc electric raceway fire barrier system. This request was not accepted under the 2.206 process because the petitioner did not provide adequate information to justify expanding the scope of the review.

In an acknowledgment letter dated June 15, 2005, the NRC informed the Petitioner that the petition was accepted, in part, for review under 10 CFR 2.206 and had been referred to the Office of Nuclear Reactor Regulation for appropriate action.

The NRC staff sent a copy of the proposed Director's Decision to the Petitioner for comment on October 11, 2005. The NRC staff did not receive any comments.

The Director of the Office of Nuclear Reactor Regulation has determined that the NRC has in effect granted the Petitioner's request. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD–05–07). The Petitioner's concerns regarding the use of Hemyc at Vermont Yankee have been adequately resolved such that no further action is needed. The licensee has replaced the Hemyc on all equipment that is relied upon for compliance with 10 CFR Part 50, Appendix R.

The documents cited in this Director's Decision are available for inspection at the Commission's Public Document Room (PDR) at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 23rd day of December 2005.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. E5–8206 Filed 12–30–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–06021]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for ROHM & HAAS Company's Facility in Philadelphia, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: John Nicholson, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5236, fax (610) 337–5269; or by e-mail: *jjn@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Rohm & Haas Company for Materials License No. 037–01665–01, to authorize release of its facility in Philadelphia, Pennsylvania, for unrestricted use and license termination. NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to authorize the release of the licensee's Philadelphia, Pennsylvania facility for unrestricted use. Rohm & Haas Company was authorized by NRC (AEC at the time) from 1956 to use radioactive materials for research and development purposes at the site. On April 26, 2005, Rohm & Haas Company requested that NRC release the facility for unrestricted use. Rohm & Haas Company has conducted surveys of the facility and

provided information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR Part 20 for unrestricted use.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by Rohm & Haas Company. As discussed in the EA, the staff has determined that the residual radioactivity meets the requirements in Subpart E of 10 CFR Part 20.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to release the facility for unrestricted use. The NRC staff has evaluated Rohm & Haas Company's request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR Part 20. The staff has found that the radiological environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (ML042310492, ML042320379, and ML042330385). Additionally, no non-radiological or cumulative impacts were identified. On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: Environmental Assessment (ML053570288); Final Status Survey and amendment request dated April 26, 2005 [ADAMS Accession No. ML051390274]; Letter dated May 16, 2005 providing additional information [ADAMS Accession No. ML051510089]; Letter dated May 27, 2005 providing additional information [ADAMS Accession No. ML051590269]; Letter dated May 31, 2005 providing additional information [ADAMS Accession No. ML051590359]; and Letter dated June 29, 2005 providing additional information [ADAMS Accession No. ML051880162]. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Documents related to operations conducted under this license not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia/foia-privacy.html.*

Dated at King of Prussia, Pennsylvania, this 23rd day of December 2005.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and Research & Development Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E5–8205 Filed 12–30–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 9, 2005 to December 21, 2005. The last biweekly notice was published on December 20, 2005 (70 FR 75489).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that

the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–

4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: September 19, 2005.

Description of amendment request: Pursuant to 10 CFR 50.90, Entergy Operations, Inc. hereby requests an Operating License amendment for Arkansas Nuclear One, Unit 2, to replace the existing steam generator (SG) tube surveillance program with that being proposed by the Technical Specifications Task Force (TSTF) in TSTF 449, Revision 4. Specifically, Technical Specification (TS) 1.1, Definitions; TS 3/4.4.5, Steam Generators; TS 3.4.6.2, Reactor Coolant System Leakage; TS 6.5.9, Steam Generator Tube Surveillance Program; and TS 6.6.7, Steam Generator Tube Surveillance Reports are being revised to incorporate the new Steam Generator Program of TSTF 449, Revision 4. The proposed changes are consistent with the Consolidated Line Item Improvement Process provided in the May 6, 2005, **Federal Register** Notice (70 FR 24126).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change requires a Steam Generator Program that includes performance criteria that will provide reasonable assurance that the steam generator (SG) tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational leakage.

The structural integrity performance criterion is:

Structural integrity performance criterion: All in-service steam generator tubes shall retain structural integrity over the full range of normal operating conditions (including startup, operation in the power range, hot standby, and cool down and all anticipated transients included in the design specification) and design basis accidents. This includes retaining a safety factor of 3.0 against burst under normal steady state full power operation primary to secondary pressure differential and a safety factor of 1.4 against burst applied to the design basis accident primary to secondary pressure differentials. Apart from the above requirements, additional loading conditions associated with the design basis accidents, or combination of accidents in accordance with the design and licensing basis, shall also be evaluated to determine if the associated loads contribute significantly to burst or collapse. In the assessment of tube integrity, those loads that do significantly affect burst or collapse shall be determined and assessed in combination with the loads due to pressure with a safety factor of 1.2 on the combined primary loads and 1.0 on axial secondary loads.

The accident induced leakage performance criterion is:

The primary to secondary accident induced leakage rate for any design basis accidents, other than a SG tube rupture, shall not exceed the leakage rate assumed in the accident analysis in terms of total leakage rate for all SGs and leakage rate for an individual SG. Leakage is not to exceed 1 gpm through any one SG.

The operational leakage performance criterion is:

The RCS operational primary to secondary leakage through any one SG shall be limited to ≤150 gallons per day per SG.

A steam generator tube rupture (SGTR) event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a SGTR event, a bounding primary to secondary leakage rate equal to the leakage rate associated with a double-ended rupture of a single tube is assumed.

For other design basis accidents such as main steam line break (MSLB) and control element assembly (CEA) ejection, the tubes are assumed to retain their structural integrity (i.e., they are assumed not to rupture). The accident induced leakage criterion introduced by the proposed changes accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis.

The SG performance criteria proposed change identify the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the Steam Generator Program required by the proposed change. The program, defined by NEI 97–06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring.

The consequences of design basis accidents are, in part, functions of the DOSE EQUIVALENT I–131 in the primary coolant and the primary to secondary LEAKAGE rates resulting from an accident. Therefore, limits are included in the plant technical specifications for operational leakage and for DOSE EQUIVALENT I–131 in primary coolant to ensure the plant is operated within its analyzed condition. The typical analysis of the limiting design basis accident assumes that primary to secondary leak rate after the accident is 1 gallon per minute with no more than 720 gallons per day in any one SG, and that the reactor coolant activity levels of DOSE EQUIVALENT I–131 are at the technical specification values before the accident.

The proposed change does not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the current technical specifications and enhances the requirements for SG inspections. The proposed change does not adversely impact any other previously evaluated design basis accident and is an improvement over the current technical specifications.

Therefore, the proposed change does not affect the consequences of a SGTR accident and the probability of such an accident is reduced. In addition, the proposed changes do not affect the consequences of other design basis events.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed performance based requirements are an improvement over the requirements imposed by the current technical specifications.

Implementation of the proposed Steam Generator Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the Steam Generator Program will be an enhancement of SG tube performance. Primary to secondary leakage that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed change does not impact any other plant system or component. The change enhances SG inspection requirements.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes also isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of a SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical

condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the Steam Generator Program to manage SG tube inspection, assessment, and plugging. The requirements established by the Steam Generator Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: David Terao.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: September 19, 2005.

Description of amendment request: Entergy Operations, Inc., proposes to amend Technical Specification (TS) 3.6.2.1, "Containment Spray System," to allow a one-time extension of the allowable outage time (AOT) for the Containment Spray System (CSS) from 72 hours to a maximum of 7 days, to be used once for each train or, at most, two times during fuel cycles 18 and 19. The proposed change is intended to provide flexibility in scheduling CSS maintenance activities, reduce refueling outage duration, and improve the availability of CSS components important to safety during plant shutdowns.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS change does not affect the design, operational characteristics, function or reliability of the CSS.

The CSS is primarily designed to mitigate the consequences of a Loss of Coolant Accident (LOCA) or Main Steam Line Break (MSLB). The requested change does not affect the assumption used in the deterministic LOCA or MSLB analyses.

The duration of a TS AOT is determined considering that there is a minimal possibility that an accident will occur while a component is removed from service. A risk informed assessment was performed which concluded that the increase in plant risk is small and consistent with the guidance contained in Regulatory Guide 1.177 ["An Approach for Plant-Specific Risk-Informed Decisionmaking: Technical Specifications"].

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change does not involve a change in the design, configuration, or method of operation of the plant that could create the possibility of a new or different kind of accident. The proposed change extends the AOT currently allowed by the TS to 7 days.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The Containment Heat Removal System (CHRS) consists of the CSS and the Containment Cooling System (CCS). The CHRS functions to rapidly reduce the containment pressure and temperature after a postulated LOCA or MSLB accident by removing thermal energy from the containment atmosphere. The CHRS also assists in limiting off-site radiation levels by reducing the pressure differential between the containment atmosphere and the outside atmosphere, thereby reducing the driving force for leakage of fission products from the containment.

The CHRS is designed so that either both trains of the CSS, or one train of CSS and one train of CCS will provide adequate heat removal to attenuate the post-accident pressure and temperature conditions imposed upon the containment following a LOCA or MSLB.

The proposed change includes administrative controls that will be established to ensure one train of CSS and one train of CCS will be available during the extended CSS AOT.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: David Terao.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: October 18, 2005.

Description of amendment request: The proposed amendment would revise applicability requirements related to single control rod withdrawal allowances in shutdown modes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The proposed special operation allowances do not involve the modification of any plant equipment or affect basic plant operation. The relevant design basis analyses are associated with refueling operations. The refueling interlocks are designed to back up procedural core reactivity controls during refueling operations to prevent an inadvertent criticality during refueling operations. The relaxations proposed in relocating and revising single controlrod withdrawal allowances during the Refueling MODE with the reactor vesselhead fully tensioned, to the proposed special operations allowances consistent with NUREG–1433 recommendations, will not increase the probability of an accident compared to a withdrawal of a rod while in Refueling MODE with the reactor vessel head removed. This is because the proposed special operations will allow the withdrawal of only one control rod at a time while requiring the one-rod-out interlock to be OPERABLE and other requirements imposed to ensure that all other rods remain fully inserted. This requirement coupled with the reactivity margin requirement for the most reactive rod fully withdrawn or removed, is adequate to prevent inadvertent criticality when a single rod is withdrawn for maintenance or testing. As such, there is no significant increase in the probability of an accident previously evaluated. Since no criticality is assumed to occur, the consequences of analyzed events are therefore not affected. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed change does not involve any physical alteration of existing plant equipment or the installation of new equipment. The basic operation of installed equipment is unchanged and no new accident initiators or failure modes are introduced as a result of these changes. The methods governing plant operation and

testing remain consistent with current safety analysis assumptions. These changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. The requirements imposed during these Special Operations ensure the existing analyses and equipment operating conditions remain bounding. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The margin of safety is not reduced because the proposed requirements offer similar protection to those imposed during normal refueling activities. The proposed special operation allowances do not involve the modification of any plant equipment or affect basic plant operation. The proposed allowances limit the withdrawal of only one control rod at a time. This allowance is controlled by the reactor mode switch in the refuel position, or other precautions to prevent the withdrawal or removal of more than one rod and the requirement that adequate reactivity margin be maintained. These requirements are adequate to prevent an inadvertent criticality. These changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed change. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J.M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Branch Chief: Richard Lauder.

Exelon Generation Company, LLC, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: January 10, 2005.

Description of amendment request: The proposed change will delete the License Conditions concerning emergency core cooling system pump suction strainers from Appendix C of the Limerick Generating Station, Unit No. 1 Facility Operating License that were added by Amendment No. 128.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The proposed change is administrative in nature. The proposed change does not involve the modification of any plant equipment nor does it affect basic plant operation. The proposed change will have no impact on any safety related structures, systems or components. The License Conditions proposed for deletion pertain to actions that have been completed and are obsolete, or involve activities that are controlled in accordance with other regulatory processes, i.e., 10 CFR 50.59 and 10 CFR 50.65.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed change is administrative in nature. The proposed change has no impact on the design, function or operation of any plant structure, system or component and does not affect any accident analyses. The License Conditions in Appendix C can be deleted because they are obsolete or involve activities that are controlled in accordance with other regulatory processes.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed change is administrative in nature, does not negate any existing requirement, and does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there is no change being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by deletion of the License Conditions.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Brad Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: Darrell J. Roberts.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 29, 2005.

Description of amendment request: The proposed amendment would eliminate operability requirements for Secondary Containment, Secondary Containment Isolation Valves, the Standby Gas Treatment System, and Secondary Containment Isolation Instrumentation when handling irradiated fuel that has decayed for 24 hours since critical reactor operations and when performing Core Alterations. Similar technical specification relaxations are proposed for the Control Room Emergency Filter System and its initiation instrumentation after a decay period of 7 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment involves implementation of the Alternative Source Term (AST) for the fuel handling accident (FHA) at Cooper Nuclear Station (CNS). There are no physical design modifications to the plant associated with the proposed amendment. The FHA AST calculation does not impact the initiators of an FHA in any way.

The changes also do not impact the initiators for any other design[-]basis accident (DBA) or events. Therefore, because DBA initiators are not being altered by adoption of the AST analyses the probability of an accident previously evaluated is not affected.

With respect to consequences, the only previously evaluated accident that could be affected is the FHA. The AST is an input to calculations used to evaluate the consequences of the accident, and does not, in and of itself, affect the plant response or the actual pathways to the environment utilized by the radiation/activity released by the fuel. It does, however, better represent the physical characteristics of the release, so that appropriate mitigation techniques may be applied. For the FHA, the AST analyses demonstrate acceptable doses that are within regulatory limits after 24 hours of radioactive decay since reactor shutdown, without credit for Secondary Containment, the Standby Gas Treatment System, Secondary Containment Isolation Valves, or Secondary Containment Isolation Instrumentation, and that the Control Room Emergency Filter System (CREFS) and CREFS Instrumentation need not be credited after a 7[-]day period of decay. Therefore, the consequences of an

accident previously evaluated are not significantly increased.

Based on the above conclusions, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not involve a physical alteration of the plant. No new or different types of equipment will be installed and there are no physical modifications to existing equipment associated with the proposed changes. The proposed changes to the control of Engineered Safety Features during handling of irradiated fuel do not create new initiators or precursors of a new or different kind of accident. New equipment or personnel failure modes that might initiate a new type of accident are not created as a result of the proposed amendment.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The proposed amendment is associated with the implementation of a new licensing basis for the CNS FHA. Approval of this change from the original source term to an AST derived in accordance with the guidance of Regulatory Guide (RG) 1.183 is being requested. The results of the FHA analysis, revised in support of the proposed license amendment, are subject to revised acceptance criteria. The AST FHA analysis has been performed using conservative methodologies, as specified in RG 1.183. Safety margins have been evaluated and analytical conservatism has been utilized to ensure that the analysis adequately bounds the postulated limiting event scenario. The dose consequences of the limiting FHA remain within the acceptance criteria presented in 10 CFR 50.67, the Standard Review Plan, and RG 1.183.

The proposed changes continue to ensure that the doses at the Exclusion Area Boundary (EAB) and Low Population Zone (LPZ) boundary, as well as the Control Room, are within the corresponding regulatory limits. For the FHA, RG 1.183 conservatively sets the EAB and LPZ limits below the 10 CFR 50.67 limit, and sets the Control Room limit consistent with 10 CFR 50.67.

Since the proposed amendment continues to ensure the doses at the EAB, LPZ and Control Room are within corresponding regulatory limits, the proposed license amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Branch Chief: David Terao.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: October 12, 2005.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 3.4.9, "RCS [reactor coolant system] Pressure and Temperature (P/T) Limits," curves 3.4.9–1, "Pressure/Temperature Limits for Non-Nuclear Heatup or Cooldown Following Nuclear Shutdown," 3.4.9–2, "Pressure/Temperature Limits for Inservice Hydrostatic and Inservice Leakage Tests, and 3.4.9–3, "Pressure/Temperature Limits for Criticality," to remove the cycle operating restriction and replace it with a limitation of 30 effective full-power years (EFPY).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed revisions to the Cooper Nuclear Station (CNS) P/T curves are based on the recommendations in Regulatory Guide (RG) 1.99, Revision 2, and are, therefore, in accordance with the latest Nuclear Regulatory Commission (NRC) guidance. The fluence evaluation for the P/T curves for 30 EFPY was performed using the NRC-approved Radiation Analysis Modeling Application (RAMA) fluence methodology. The curves generated from this method provide guidance to ensure that the P/T limits will not be exceeded during any phase of reactor operation. Accordingly, the proposed revision to the CNS P/T curves is based on an NRC accepted means of ensuring protection against brittle reactor vessel fracture, and compliance with 10 CFR 50 Appendix G. The curves are the same as approved in Amendment Number 204, CNS is only requesting to remove the one cycle limitation and limit their use to 30 EFPY based on the shift in the Adjusted Reference Temperature (ART) using the new fluence values. Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Based on the above, NPPD [Nebraska Public Power District] concludes that the proposed TS change to TS 3.4.9[,] P/T curves, Figures 3.4.9–1, 3.4.9–2, and 3.4.9–3 does not significantly increase the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change updates existing P/T operating limits to correspond to the current NRC guidance. The proposed TS change extends the use of the current, NRC-approved P/T curves beyond the end of Cycle 23 to 30 EFPY. The proposed change does not involve a physical change to the plant, add any new equipment or any new mode of operation. These TS changes demonstrate compliance with the brittle fracture requirements of 10 CFR 50 Appendix G and, therefore, do not create the possibility for a new or different kind of accident from any accident previously evaluated.

Based on the above, NPPD concludes that the proposed TS change to TS 3.4.9[,] P/T curves, Figures 3.4.9–1, 3.4.9–2, and 3.4.9–3 does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the existing CNS P/T curves to limit their use to 30 EFPY based on fluence calculation using the NRC-approved Radiation Analysis Modeling Application (RAMA) fluence methodology. The curves have not been recalculated. Limiting the use of the P/T curves to 30 EFPY, based on the recalculation of the fluence per the NRC-approved (RAMA) fluence methodology does not affect a margin of safety. These changes do not affect any system used to mitigate accidents or transients.

Based on the above, NPPD concludes that the proposed TS change to TS 3.4.9[,] P/T curves, Figures 3.4.9–1, 3.4.9–2, and 3.4.9–3 does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Branch Chief: David Terao.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: September 16, 2005.

Description of amendment request: The proposed amendment would revise the surveillance requirements (SRs) for the emergency Diesel Generators (EDGs) to provide more margin to the acceptance criterion. The new SR

acceptance criterion will allow the EDG frequency to be within ±2 percent of the rated value. The current acceptance limit is nominally ±1 percent of rated frequency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change. The EDG are not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The consequences of any accident previously evaluated are not increased, as the EDG will continue to meet their safety function, as specified in the accident analysis, in a highly reliable manner.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The changes do not alter assumptions made in the safety analysis for the EDG performance. The proposed changes remain consistent with the safety analysis assumptions (e.g., UFSAR Section 8.3.1.4).

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the acceptance criterion for EDG Surveillances to match that in the NRC's guidelines (Safety Guide 9) and the Improved Standard Technical Specifications (NUREG–1433, Rev 3). Because the EDG can perform to the specified acceptance criterion as stated in the UFSAR Section 8.3.1.4; the EDG will continue to meet their specified safety function in the safety analysis, in a highly reliable manner.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Branch Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: November 21, 2005.

Description of amendment request: The proposed amendments to Prairie Island Nuclear Generating Plant (PINGP) Units 1 and 2 Operating Licenses, would allow extension of the Completion Time associated with Technical Specification (TS) 3.8.1 Required Action B4, from 7 days to 14 days and for concomitant TS changes. The proposed amendment would also allow online performance of emergency diesel generator maintenance activities that are currently performed during refueling outages, to provide additional flexibility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This license amendment request proposes Technical Specification changes to extend the Technical Specification 3.8.1, "AC Sources-Operating," Completion Time for an inoperable emergency diesel generator to 14 days. These changes allow an emergency diesel generator to be inoperable for 7 days more than Technical Specification 3.8.1 currently provides. A minor format correction on the Technical Specification 3.8.1 Actions Table is also proposed.

The emergency diesel generators are safety related components which provide backup electrical power supply to the onsite Safeguards Distribution System. The emergency diesel generators are not accident initiators, thus allowing an emergency diesel generator to be inoperable for an additional 7 days for performance of maintenance or testing does not increase the probability of a previously evaluated accident.

Deterministic and probabilistic risk assessments evaluated the effect of the proposed Technical Specification changes on the availability of an electrical power supply to the plant emergency safeguards features systems. These assessments concluded that the proposed Technical Specification changes do not involve a significant increase in the risk of power supply unavailability.

The plant emergency safeguards features systems consist of two trains for 100% redundancy within each unit. Accident analyses demonstrate that only one emergency safeguards features train is required for accident mitigation. Thus, with one train inoperable the other train is capable of performing the required safety function. Design basis analyses are not required to be performed assuming extended loss of all power supplies to the plant emergency safeguards features systems. Thus this change does not involve a significant increase in the consequences of a previously analyzed accident.

The Technical Specification format correction is an administrative change and does not involve a significant increase in the probability or consequences of an accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This license amendment request proposes Technical Specification changes to extend the Technical Specification 3.8.1, "AC Sources-Operating," Completion Time for an inoperable emergency diesel generator to 14 days. These changes allow an emergency diesel generator to be inoperable for 7 days more than Technical Specification 3.8.1 currently provides. A minor format correction on the Technical Specification 3.8.1 Actions Table is also proposed.

The proposed Technical Specification changes do not involve a change in the plant design, system operation, or procedures involved with the emergency diesel generators. The proposed changes allow an emergency diesel generator to be inoperable for additional time. There are no new failure modes or mechanisms created due to plant operation for an extended period to perform emergency diesel generator maintenance or testing. Extended operation with an inoperable emergency diesel generator does not involve any modification in the operational limits or physical design of plant systems. There are no new accident precursors generated due to the extended allowed Completion Time.

The Technical Specification format correction is an administrative change and does not create the possibility of a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

This license amendment request proposes Technical Specification changes to extend the Technical Specification 3.8.1, "AC Sources-Operating," Completion Time for an inoperable emergency diesel generator to 14 days. These changes allow an emergency diesel generator to be inoperable for 7 days

more than Technical Specification 3.8.1 currently provides. A minor format correction on the Technical Specification 3.8.1 Actions Table is also proposed.

Currently, if an inoperable emergency diesel generator is not restored to operable status within 7 days, Technical Specification 3.8.1 will require unit shutdown to MODE 3 within 6 hours and MODE 5 within 36 hours. The proposed Technical Specification changes will allow steady state plant operation at 100% power for an additional 7 days.

There is some risk associated with continued operation for an additional 7 days with one emergency diesel generator inoperable. This risk is judged to be small and reasonable consistent with the risk associated with operations for 7 days with one emergency diesel generator inoperable as allowed by the current Technical Specifications. Specifically, the remaining operable emergency diesel generator and paths are adequate to supply electrical power to the onsite Safeguards Distribution System. An emergency diesel generator is required to operate only if both offsite power sources fail and there is an event which requires operation of the plant emergency safeguards features such as a design basis accident. The probability of a design basis accident occurring during this period is low.

Deterministic and probabilistic risk assessments evaluated the effect of the proposed Technical Specification changes on the availability of an electrical power supply to the plant emergency safeguards features systems. These assessments concluded that the proposed Technical Specification changes do not involve a significant increase in the risk of power supply unavailability.

There is also some risk associated with the Technical Specification unit shutdown evolutions. Plant load change evolutions require additional plant operations activities which introduce equipment challenges, increase the risk of plant trip and increase the risk for operational errors. Also unit shutdown does not remove the desirability of having emergency diesel generator backup for the 4 kV safeguards buses, but rather places dependence on the operable 4 kV bus by requiring operation of the residual heat removal system. Thus, possible additional risk associated with continuing operation an additional 7 days with an inoperable emergency diesel generator may be offset by avoiding the additional risk associated with unit shutdown.

Therefore, based on the considerations given above, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Branch Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 30, 2005.

Description of amendment request: Omaha Public Power District (OPPD) proposes to change the licensing basis by replacing EMF–2087(P)(A), Revision 0, "SEM/PWR–98: ECCS [Emergency Core Cooling System] Evaluation Model for PWR [pressurized-water reactor] LBLOCA [large break loss-of-coolant accident] Applications," Siemens Power Corporation, June 1999, with the AREVA Topical Report EMF–2103(P)(A), "Realistic Large Break LOCA Methodology," Framatome ANP, Inc. in the Fort Calhoun Station, Unit 1 (FCS) Core Operating Limit Report (COLR). Currently, fuel for the FCS is supplied by AREVA. AREVA has performed an FCS-specific LBLOCA analysis using their realistic LBLOCA methodology for Cycle 24 and beyond.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment replaces EMF–2087(P)(A), Revision 0, "SEM/PWR–98: ECCS Evaluation Model for PWR LBLOCA Applications," Siemens Power Corporation, June 1999 (Reference 8.6 [of the licensee's amendment request]), with the AREVA Topical Report EMF–2103(P)(A), "Realistic Large Break LOCA Methodology," Framatome ANP, Inc. (Reference 8.1 [of the licensee's amendment request]) in the FCS COLR. AREVA Topical Report EMF–2103(P)(A) will also replace EMF–2087(P)(A) in OPPD topical report OPPD–NA–8303 (Reference 8.5 [of the licensee's amendment request]). This amendment will allow the use of the RLBLOCA [realistic large break loss-of-coolant accident] methodology to perform the FCS LBLOCA analysis. The proposed amendment will not affect any previously evaluated accidents because they are analyzed using applicable NRC[-]approved methodologies to ensure all required safety limits are met.

The proposed amendment does not affect any acceptance criteria for any postulated accidents or anticipated operational occurrences (AOOs) analyzed and listed in the FCS Updated Safety Analysis Report (USAR). The proposed change will not increase the likelihood of a malfunction of a structure, system or components (SSC) since the change does not involve operation of SSCs in a manner or configuration different from those previously evaluated.

The results from the FCS RLBLOCA analysis have demonstrated the adequacy of the ECCS, and these results satisfy the regulatory criteria set forth in 10 CFR 50.46(b).

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not result in changes in the operation or overall configuration of the facility. The proposed amendment does not involve a change in the design function or the operation of SSCs involved. The proposed amendment does not involve the operation or configuration of the SSCs different from those previously analyzed. The proposed amendment to add the RLBLOCA methodology to the FCS COLR and OPPD topical report OPPD–NA–8303 (Reference 8.5 [of the licensee's amendment request]) does not create any new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

AREVA has performed the RLBLOCA analysis for FCS and demonstrated that the Emergency Core Cooling System (ECCS) is adequate to mitigate the consequences of a[n] LBLOCA. The analysis has concluded that the acceptance criteria for the ECCS are met with significantly increased margins.

All required safety limits will continue to be analyzed using methodologies approved by the Nuclear Regulatory Commission.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Branch Chief: David Terao.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: October 5, 2005.

Description of amendment request: The proposed amendment would delete

requirements from the Technical Specifications (TSs) to maintain hydrogen recombiners and hydrogen and oxygen monitors. A notice of availability for this TS improvement using the consolidated line item improvement process was published in the **Federal Register** on September 25, 2003 (68 FR 55416).

Licensees were generally required to implement upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide (RG) 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2 in 1979. Requirements related to combustible gas control were imposed by order for many facilities and were added to, or included in, the TSs for nuclear power reactors currently licensed to operate. The revised Title 10 of the Code of Federal Regulations (10 CFR) Section 50.44, "Combustible gas control for nuclear power reactors," eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The Nuclear Regulatory Commission (NRC) staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated October 5, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The NRC has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen and oxygen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen and oxygen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44, the NRC found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. Also, as part of the rulemaking to revise 10 CFR 50.44, the NRC found that Category 2, as defined in RG 1.97, is an appropriate categorization for the oxygen monitors, because the monitors are required to verify the status of the inert containment.

The regulatory requirements for the hydrogen and oxygen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, [classification of the oxygen monitors as Category 2,] and removal of the hydrogen and oxygen monitors from TSs will not prevent an accident management strategy through the use of the severe accident management guidelines, the emergency plan, the emergency operating procedures, and site survey monitoring that support modification of emergency plan protective action recommendations.

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TSs, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TSs, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen and oxygen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen and oxygen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TSs, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The NRC has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Category 2 oxygen monitors are adequate to verify the status of an inserted containment.

Therefore, this change does not involve a significant reduction in the margin of safety. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related oxygen monitors. Removal of hydrogen and oxygen monitoring from TSs will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Branch Chief: Richard J. Lauder.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: October 5, 2005.

Description of amendment request: The requested change will delete Technical Specification (TS) 5.6.1,

"Occupational Radiation Exposure Report," and TS 5.6.4, "Monthly Operating Reports."

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated October 5, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates the Technical Specifications (TSs) reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Branch Chief: Richard J. Lauder.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: November 7, 2005.

Description of amendment request: The proposed amendment would revise Technical Specification 3.9.3, "Containment Penetrations," to allow an emergency egress door, access door, or roll up door, as associated with the equipment hatch penetration, to be open, but capable of being closed, during core alterations or movement of irradiated fuel within containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The change has no impact on the probability of a FHA [fuel-handling accident] inside containment. It merely allows the transfer of equipment and personnel through the equipment hatch, and allows parallel activities. The refueling operations have spatial separation from the open hatch precluding interaction with refueling. Having the equipment hatch open will not impact the operation or operability of refueling equipment or the performance of the refueling crew.

Per [Regulatory Guide 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors"], the analysis was performed assuming a two hour release of radioactivity with the hatch open for the entire duration. An analysis assuming a closed hatch was not performed for comparison. This change merely allows plant conditions to exist that are assumed in the analysis. The relatively small off-site dose values shown in Section 4 [of the November 7 application], and the additional conservatism provided by the requirement for administrative closure capability, demonstrates that any consequence to the public resulting from this change would be minimal.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The change more closely aligns the allowed plant conditions with those conditions assumed in an existing (analyzed) accident. Allowing movement of equipment through the equipment hatch during core alterations does not create any new accident initiators. Given the plant conditions, it does not affect system operation or the functions they perform. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The change does not create conditions different from or less conservative than, those assumed in the analysis, and is consistent with the regulatory guidance for performing that analysis. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005.

NRC Branch Chief: Richard J. Lauder.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: November 18, 2005.

Description of amendment request: The proposed amendment would revise the frequency in Technical Specification Surveillance Requirement (SR) 3.6.6.15, which verifies that each containment spray nozzle is unobstructed. The frequency would be changed from "10 years" to "following maintenance which could result in nozzle blockage."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies the SR to verify that the Containment Spray System nozzles are unobstructed after maintenance that could introduce material that could result in nozzle blockage. The spray nozzles are not assumed to be initiators of any previously analyzed accident. Therefore, the change does not increase the probability of

any accident previously evaluated. The spray nozzles are assumed in the accident analyses to mitigate design basis accidents. The revised SR to verify system OPERABILITY following maintenance is considered adequate to ensure OPERABILITY of the Containment Spray System. Since the system will still be able to perform its accident mitigation function, the consequences of accidents previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the SR to verify that the Containment Spray System nozzles are unobstructed after maintenance that could result in nozzle blockage. The change does not introduce a new mode of plant operation and does not involve physical modification to the plant. The change will not introduce new accident initiators or impact the assumptions made in the safety analysis. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the frequency for performance of the SR to verify that the Containment Spray System nozzles are unobstructed. The frequency is changed from every 10 years to following maintenance that could result in nozzle blockage. This requirement, along with foreign material exclusion programs and the remote physical location of the spray nozzles, provides assurance that the spray nozzles will remain unobstructed. As the spray nozzles are expected to remain unobstructed and able to perform their post-accident mitigation function, plant safety is not significantly affected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005.

NRC Branch Chief: Richard J. Lauder.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: December 6, 2005.

Description of amendment requests: The proposed amendment will delete Technical Specification (TS) Limiting Condition for Operation (LCO) 3.3.10, "Fuel Handling Isolation Signal (FHIS)," and TS LCO 3.7.14, "Fuel Handling Building Post-Accident Cleanup Filter System," and their associated Surveillance Requirements. The proposed amendment will also delete the Fuel Handling Building Post-Accident Cleanup Filter Systems from the Ventilation Filter Testing Program in administrative TS 5.5.2.12.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Fuel Handling Building (FHB) Post-Accident Cleanup Filter System (PACFS) and its initiating radiation monitors are not involved in the initiation of any accidents. The PACFS is not credited with providing any supplemental filtration of releases from an accident occurring in the FHB. The PACFS was designed to provide an accident mitigation function by isolating the system and filtering the radioiodines that may be released from a damaged fuel assembly in the event of a Fuel Handling Accident (FHA). The charcoal adsorber was the primary component that supported this filtration function. However, the FHA dose consequences analysis has demonstrated that doses due to the FHA, to both the public and the control room operators, remain well within regulatory acceptance limits even assuming no credit for either isolation or filtration. The charcoal filtration function is not required and need not be tested. Thus, there is no required safety function provided by either the ventilation system or the airborne radiation monitor in the event of a fuel handling accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The FHB PACFS and its initiating radiation monitors do not initiate any accidents. The PACFS was designed to provide an accident mitigation function by isolating the system and filtering the radioiodines that may be released from a damaged fuel assembly in the event of a Fuel Handling Accident. Analysis shows that the isolation and filtration functions are not required. The charcoal adsorber cannot influence any accident initiators. The deletion of the Technical Specification requirements does not impact this conclusion and does not influence any new potential accident scenarios in any way.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The FHB PACFS and its initiating radiation monitors were designed to provide an accident mitigation function by filtering the radioiodines that may be released from a damaged fuel assembly in the event of a Fuel Handling Accident. Analysis of the FHA in the FHB demonstrates that the margin of safety provided by the Technical Specification requirement will not change. Since the control room charcoal adsorber is capable of accommodating the design[-]basis loss[-]of[-]coolant accident fission product halogen loadings, which are more limiting than the fuel handling accident loadings, [a] more than adequate design margin is available with respect to postulated FHA releases. The margin of safety, in terms of the dose limitations of 10 CFR part 100 and 10 CFR part 50[,] Appendix A, General Design Criterion 19, has not been significantly reduced.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: David Terao.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: July 21, 2005.

Description of amendment request: The proposed change would revise the accident monitoring instrumentation listing, the allowed outage times (AOTs) to be consistent with the requirements of the Improved Technical Specifications (ITS) for post accident monitoring instrumentation. TS 3.7E, TS Table 3.7–6, and TS Table 4.1–2 would be affected by this change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the [AOTs] and requirements for accident monitoring instrumentation. The proposed change expands the instrumentation listing in the Technical Specifications to include the Category 1 RG [Regulatory Guide] 1.97 variables and deletes the Category 2 RG 1.97 variables, which are addressed in a licensee controlled document. The revise requirements continue to require the accident monitoring instrumentation to be operable. The required operability will continue to ensure that sufficient information is available on selected unit parameters to monitor and assess unit status and response during and following an accident. Accident monitoring instrumentation is not an initiator of any accident previously evaluated. The consequences of an accident during the extended [AOTs] would be the same as the consequences during the current [AOTs]. Therefore, the proposed change does not involve a significant increase in either the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously identified.

The proposed change involves no physical changes to the plant, nor is there any impact on the design of the plant or the accident monitoring instrumentation. There is also no impact on the capability of the instrumentation to provide post accident data for plant operator use, the accident monitoring instrumentation initiates no automatic action, and there is no change in the likelihood that the instrumentation will fail since surveillance tests will continue to be performed. Therefore, the proposed change does not introduce any new failures that could create the possibility of a new or different kind of accident from any accident previously identified.

3. Involve a significant reduction in a margin of safety.

The proposed change provides more appropriate times to restore inoperable accident monitoring instrumentation to operable status and does not impact the level of assurance that the instrumentation will be available to perform its function. Accident monitoring instrumentation has been screened out of the probabilistic risk analysis (PRA) model due to its low risk significance, so the proposed change has no risk impact from a PRA perspective. The proposed change does not alter the condition or performance of equipment or systems used in accident mitigation or assumed in any accident analysis. Therefore, this proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Branch Chief: Evangelos C. Marinos.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: September 13, 2005.

Description of amendment request: The proposed change would change the exclusion area boundary (EAB), reduce the design-basis accident (DBA) Atmospheric Dispersion Factor (X/Q), and reduce the calculated EAB dose consequences for accidents described in Chapter 14 of the Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed redefinition of the EAB will significantly reduce the design basis accident X/Q, which will result in an increase in margin to the dose consequence limits for future accident analyses. The dose consequence accident analyses were not reanalyzed with this change because the EAB results currently documented in the UFSAR are conservative with respect to consequences that would be calculated using this redefined EAB. The EAB redefinition is not an initiator of any accident previously evaluated and has no impact on radiation levels, airborne activity, DBA source terms, or releases.

Therefore, the proposed change does not involve a significant increase in either the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously identified.

The proposed change involves no physical changes to the plant, nor is there any impact on the design or operation of the plant. There is also no impact on any equipment relied upon to mitigate an accident. Therefore, the proposed change does not introduce any new failures that could create the possibility of a new or different kind of accident from any accident previously identified.

3. Involve a significant reduction in a margin of safety.

The proposed change does not alter the condition or performance of equipment or systems used in accident mitigation or assumed in any accident analysis. The EAB redefinition has no impact on radiation levels, airborne activity, DBA source terms, or releases. Therefore, this proposed change does not involve a significant reduction in the [a] margin of safety. However, the proposed redefinition of the EAB will significantly reduce the design basis accident X/Q, which will result in an increase in margin to the dose consequence limits for future accident analyses.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Branch Chief: Evangelos C. Marinos.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 27, 2005.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) 1.1, "Definitions," and 3.4.16, "RCS [reactor coolant system] Specific Activity." The revisions would replace the current Limiting Condition for Operation (LCO) 3.4.16 limit on RCS gross specific activity with limits on RCS Dose Equivalent I–131 and Dose Equivalent XE–133 (DEX). The conditions and required actions for LCO 3.4.16 not being met, and surveillance requirements for LCO 3.4.16, are being revised. The modes of applicability for LCO 3.4.16 would be extended. The current definition of $\bar{E}$—Average Disintegration Energy in TS 1.1 would be replaced by the definition of DEX. In addition, the current definition of Dose Equivalent I–131 in TS 1.1 would be revised to allow alternate, NRC-approved thyroid dose conversion factors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

The proposed changes would add new thyroid dose conversion factor reference[s] to

the definition of DOSE EQUIVALENT I–131, eliminate the definition of Ē–AVERAGE DISINTEGRATION ENERGY, add a new definition of DOSE EQUIVALENT XE–133, replace the Technical Specification (TS) 3.4.16 limit on reactor coolant system (RCS) gross specific activity with a limit on noble gas specific activity in the form of a Limiting Condition for Operation (LCO) on DOSE EQUIVALENT XE–133, replace TS Figure 3.4.16–1 with a maximum limit on DOSE EQUIVALENT I–131, extend the Applicability of LCO 3.4.16, and make corresponding changes to TS 3.4.16 to reflect all of the above. The proposed changes are not accident initiators and have no impact on the probability of occurrence of any design[-]basis accidents.

The proposed changes will have no impact on the consequences of a design[-]basis accident because they will limit the RCS noble gas specific activity to be consistent with the values assumed in the radiological consequence analyses. The changes will also limit the potential RCS [radio]iodine concentration excursion to the value currently associated with full power operation, which is more restrictive on plant operation than the existing allowable RCS [radio]iodine specific activity at lower power levels.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

The proposed changes do not alter any physical part of the plant nor do they affect any plant operating parameters besides the allowable specific activity in the RCS. The changes which impact the allowable specific activity in the RCS are consistent with the assumptions assumed in the current radiological consequence analyses. [The proposed changes are also not accident initiators.]

Therefore, the proposed changes do not create the possibility of a new or different [kind of] accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Response: No.

The acceptance criteria related to the proposed changes involve the allowable control room and offsite radiological consequences following a design[-]basis accident. The proposed changes will have no impact on the radiological consequences of a design[-]basis accident because they will limit the RCS noble gas specific activity to be consistent with the values assumed in the radiological consequence analyses. The changes will also limit the potential RCS [radio]iodine specific activity excursion to the value currently associated with full power operation, which is more restrictive on plant operation than the existing allowable RCS [radio]iodine specific activity at lower power levels.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: David Terao.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: October 12, 2004, as supplemented by March 4 and August 4, 2005.

Brief description of amendment: The license amendment changes the Final Safety Analysis Report (FSAR) to reflect that the reactor core isolation cooling (RCIC) system is not required to mitigate the consequences of the control rod drop accident (CRDA). The FSAR revision clarifies that although the RCIC system is designed to initiate and inject into the reactor pressure vessel (RPV) at a low water level (L2), the additional RPV inventory is not required to prevent the accident or to mitigate the consequences of the CRDA.

Date of issuance: December 14, 2005.

Effective date: This license amendment is effective as of the date of its issuance, and shall be implemented within 60 days.

Amendment No.: 196.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 2004 (69 FR 64987).

The supplemental letters dated March 4 and August 4, 2005, provided information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 14, 2005.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: August 17, 2005.

Brief description of amendment: The amendment allows a one-time extension of the 72-hour Completion Time (CT) for the required action of Condition B of Technical Specification (TS) 3.7.1, "Standby Service Water (SW) System and Ultimate Heat Sink (UHS)," and of TS 3.8.1, "AC Sources—Operating."

Specifically, the proposed one-time extension request is for an additional 72 hours to the CT and would result in a 144-hour CT for an inoperable SW subsystem. This would allow extensive maintenance, not capable of being completed in the current 72-hour CT, to be conducted on the SW train B pump.

Date of issuance: December 8, 2005.

Effective date: The license amendment is effective as of its date of issuance.

Amendment No.: 195.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 27, 2005 (70 FR 56501)

The November 15 and 30, 2005, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 2005.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania; FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio; FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendments: May 18 and June 1, 2005, as supplemented by letters dated July 15 and October 31, 2005.

Brief description of amendments: The conforming amendments implement the direct license transfers of the Facility Operating Licenses for Beaver Valley Power Station, Units 1 and 2, Davis-Besse Nuclear Power Station, Unit 1, and Perry Nuclear Power Plant, Unit 1, to the extent held by Pennsylvania Power Company, Ohio Edison Company, OES Nuclear, Inc., the Cleveland Electric Illuminating Company, and the Toledo Edison Company, with respect to their current ownership interests, to FirstEnergy Nuclear Generation Corporation, a new nuclear generation subsidiary of FirstEnergy Corporation.

Date of issuance: December 16, 2005.

Effective date: As the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos. for License Nos. DPR–66 and NPF–73: 269 and 151.

Amendment Nos. for License No. NPF–3: 270.

Amendment Nos. for License No. NPF–58: 137.

Facility Operating License Nos. DPR–66, NPF–73, NPF–3, and NPF–58: Amendments revised the Licenses.

Date of initial notice in **Federal Register:** August 2, 2005 (70 FR 44390–44395).

The supplements dated July 15 and October 31, 2005 clarified the application, did not expand the scope of the application as originally noticed.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 16, 2005.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 20, 2005.

Brief description of amendment: The amendment revises Cooper Nuclear Station TS 5.3, Unit Staff Qualifications, to upgrade the qualification standard for the shift manager, senior operator, licensed operator, and shift technical engineer from Regulatory Guide 1.8, "Qualification and Training of Personnel for Nuclear Power Plants," Revision 2, April 1987, to Regulatory Guide 1.8, Revision 3, May 2000. It also clarifies qualification requirements applicable to the operations manager position.

Date of issuance: December 15, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 214.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 11, 2005 (70 FR 59085).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 2005.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: July 9, 2004, as supplemented by letters dated July 9, 2004, August 17, 2004, and June 3, 2005.

Brief description of amendment: The amendment authorizes the use of the Holtec davit crane in the refueling building for cask handling operations.

Date of issuance: December 15, 2005.

Effective date: December 15, 2005, and shall be implemented within 60 days of issuance.

Amendment No.: 37.

Facility Operating License No. DPR–7: This amendment revises the licensing basis.

Date of initial notice in **Federal Register:** December 7, 2004 (69 FR 70721).

The July 9, 2004, August 17, 2004, and June 3, 2005, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff original no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 2005.

No significant hazards consideration comments received: No.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: March 10, 2005, as supplemented on June 8 and August 31, 2005.

Brief description of amendment: The amendment revises Technical Specification 5.5.15, "Containment Leakage Rate Testing Program," to extend, on a one-time basis, the interval for completing the next containment integrated leakage rate test, pursuant to Appendix J to Part 50 of Title 10 of the Code of Federal Regulations, from 10 years to 15 years since the last test. Therefore, the first test performed after the May 31, 1996, test shall be performed by May 31, 2011.

Date of issuance: December 8, 2005.

Effective date: As of the date of issuance to be implemented within 90 days.

Amendment No.: 93.

Renewed Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 7, 2005 (70 FR 33217).

The June 8 and August 31, 2005, letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated December 8, 2005.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: June 22, 2005.

Brief description of amendment: This amendment for Virgil C. Summer replaces the current reactor coolant system pressure-temperature limits for 32 effective full power years with the proposed limits for 56 effective full power years.

Date of issuance: December 13, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 174.

Renewed Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 27, 2005 (70 FR 56504).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 13, 2005.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: May 25, 2005.

Brief description of amendments: The amendments revised the Technical Specifications to adopt the provisions of Industry/TS Task Force (TSTF) change TSTF–359, "Increased Flexibility in Mode Restraints."

Date of issuance: December 13, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 246/190.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 16, 2005 (70 FR 48207).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 13, 2005.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: April 26, 2004, as supplemented by letters dated April 18 and July 22, 2005.

Brief description of amendments: The amendments revised the Units 1 and 2 Technical Specifications Limiting Condition for Operation 3.7.9, "Ultimate Heat Sink (UHS)," to allow plant operation with three fans and four spray cells in the Nuclear Service Cooling Water system under certain atmospheric conditions.

Date of issuance: December 2, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 140 and 119.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 20, 2004 (69 FR 43462).

The supplements dated April 18 and July 22, 2005, provided clarifying information that did not change the scope of the April 26, 2004, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 2, 2005.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 23rd day of December, 2005.

For the Nuclear Regulatory Commission.

Edwin M. Hackett,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 05–24669 Filed 12–30–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 2, 2006:

A Closed Meeting will be held on Thursday, January 5, 2006 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a), (3), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, January 5, 2006 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Regulatory matter involving a financial institution;

Amicus consideration; and an Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: December 29, 2005.

Nancy M. Morris,

Secretary.

[FR Doc. 05–24702 Filed 12–29–05; 3:49 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53024; File No. SR–NASD–2005–095]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 2 Thereto Relating to Sub-Penny Restrictions for Non-Nasdaq Over-the-Counter Equity Securities

December 27, 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 July 28, 2005, the National Association of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Securities Dealers, Inc. ("NASD") 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 NASD. On August 16, 2005, NASD filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 25, 2005.[4] On December 22, 2005, NASD filed Amendment No. 2 to the proposed rule change.[5] 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

NASD is proposing to amend NASD Rule 6750 to impose restrictions on the display of quotes and orders in sub-penny increments for non-Nasdaq OTC equity securities.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

6540. Requirements Applicable to Market Makers

(a) No change.

(b) No change.

[(c) A participating ATS or ECN shall reflect non-subscriber access or post-transaction fees in the ATS's or ECN's posted quote in the OTC Bulletin Board montage.]

[(d)]*(c)* OTCBB-eligible securities that meet the frequency-of-quotation requirement for the so called "piggyback" exception in SEC Rule 15c2–11(f)(3)(i) are identified in the Service as "active" securities. A member can commence market making in any active security by registering as a market maker through a Nasdaq Workstation at the firm. In all other instances, a member must follow the procedure contained in this Rule to become qualified as a market maker in a particular OTCBB-eligible security.[1]

(1) Permissible Quotation Entries

(A) No change.

(B) No change.

(C) No change.

(D) No change.

(E) The written notice required by subparagraphs [(d)]*(c)*(1)(D)(i), (iii) and (iv) of this Rule may be submitted on the Underwriting Activity Report provided by the Market Regulation Department.

(F) For purposes of subparagraph [(d)]*(c)*(1)(D), SEC Rules 100, 101, 103 and 104 are rules of the Commission adopted under Regulation M and the following terms shall have the meanings as defined in SEC Rule 100: "affiliated purchaser," "distribution," "distribution participant," "penalty bid," "reference security," "restricted period," "stabilizing," "subject security," and "syndicate covering transaction."

(2) No change.

(3) No change.

(4) No change.

(5) No change.

[(e)]*(d)* Compliance with Market Maker Requirements

Failure of a member or a person associated with a member to comply with this Rule may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

[1] No change to footnote.

* * * * *

6750. [Minimum] Quotation [Size] Requirements for OTC Equity Securities

(a) No change.

(b) No member shall display, rank, or accept a bid or offer, an order, or an indication of interest in any OTC Equity Security priced in an increment smaller than $0.01 if that bid or offer, order or indication of interest is priced equal to or greater than $1.00 per share.

(c) No member shall display, rank, or accept a bid or offer, an order, or an indication of interest in any OTC Equity Security priced in an increment smaller than $0.0001 if that bid or offer, order or indication of interest is priced equal to or greater than $0.01 per share and less than $1.00 per share.

[(b)]*(d)* For purposes of this Rule, the term "OTC Equity Security" means any equity security not classified as a "designated security" for purposes of the Rule 4630 and 4640 Series, or as an "eligible security," for purposes of the Rule 6400 Series. The term does not include "restricted securities," as defined by SEC Rule 144(a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL Market[SM].

* The OTCBB can accept bids/offers expressed in fractions as small as ½ or in decimals up to *four* [six] places. In applying the price test for minimum quotation size, any increment beyond an upper limit in the right hand column will trigger application of the minimum quote size for the next tier. For example, a bid (or offer) of $.505 must be firm for a size of 2,500 shares.

* * * * *

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

Based on comments received in response to the publication of the proposed rule change and Amendment No. 1 thereto, NASD is filing this Amendment No. 2 to SR-NASD–2005–095 to respond to the comments received and to make a technical change as described herein.

Proposal. As described in the original filing and Amendment No. 1, NASD is proposing amendments to NASD Rule 6750 that would prohibit members from displaying, ranking, or accepting a bid or offer, an order, or an indication of interest in any non-Nasdaq OTC equity securities in any quotation medium priced in an increment smaller than $0.01 if such bid or offer, order, or indication of interest is priced equal to or greater than $1.00 per share. In addition, members also would be prohibited from displaying, ranking, or accepting a bid, offer, an order, or an indication of interest in any non-Nasdaq OTC Equity Security priced in an increment smaller than $0.0001 if such bid or offer, order, or indication of interest is priced equal to or greater than $0.01 per share and less than $1.00 per share.

Comments to the Proposed Rule Change. The Commission received two comment letters in response to the publication of the proposed rule change.[6] The first commenter supports

[3] In Amendment No. 1, the NASD made certain technical changes to the rule text.

[4] Securities Exchange Act Release No. 52280 (August 17, 2005), 70 FR 49959.

[5] In Amendment No. 2, the NASD altered the proposed rule text in response to a commenter, and made a technical change to the rule text.

[6] *See* Letter to Jonathan G. Katz, Secretary, Commission, from Phylis M. Esposito, Executive Vice President, Chief Strategy Officer, Ameritrade, Inc., dated October 31, 2005; Letter to Jonathan G. Katz, Secretary, Commission, from Kevin J.P. O'Hara, Chief Administrative Officer and General

the proposal, but states the proposed sub-penny requirements conflict with Rule 6540(c), which requires alternative trading systems ("ATSs") and electronic communications networks ("ECNs") to reflect non-subscriber access or post-transaction fees in their posted quote in the over-the-counter Bulletin Board ("OTCBB") montage. Specifically, the commenter states that, because ATS access fees generally are in sub-penny amounts, ATSs would not be able to reflect those access fees in their quotes if sub-penny quoting were prohibited. In addition, the commenter contends that there is no legitimate policy rationale for keeping Rule 6540(c) for the OTCBB, particularly in light of the Commission's recent adoption of Regulation NMS, which permits ECNs and ATS to charge access fees in national market system securities.

NASD agrees with the commenter that, absent eliminating the access fee display requirement Rule 6540(c), it would conflict with the proposed amendments to Rule 6750. Accordingly, NASD is proposing to delete the text of Rule 6540(c).

The second commenter also supports the proposal, but argues that further rulemaking related to the OTC market is required. Specifically, the commenter suggests that NASD impose limit order display requirements for OTC equity securities, together with or prior to the implementation of this proposal. The commenter indicates that, unlike Rule 612 under Regulation NMS,[7] which was preceded by the Commission's Order Handling Rules, including the Limit Order Display Rule,[8] no similar requirements currently exist in the OTC market.

Because the changes recommended by the commenter are outside the scope of the proposed changes that are part of this rule filing, NASD is not responding to these recommendations specifically herein. NASD will review and analyze these recommendations in the same manner in which it would consider any requests for rulemaking, and, based on such review and analysis, will determine whether further action on these recommendations is appropriate.

Technical Change. NASD also is proposing to make a technical change to the footnote in Rule 6750 relating to OTCBB system technology. Specifically, the footnote in Rule 6750 provides, among other things, that the OTCBB can accept bids/offers expressed in decimals up to six decimal places. The footnote text does not reflect the current OTCBB technology. Therefore, NASD is proposing to amend the text of the footnote in Rule 6750 to reflect that the OTCBB can accept bids/offers expressed in decimals up to four decimal places.

2. Statutory Basis

NASD believes that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Act,[9] in general, and with section 15A(b)(6) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change would reduce the potential harms associated with sub-penny quoting in non-Nasdaq OTC equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change and Amendment No. 1 thereto were solicited by the Commission in response to the publication of the proposed rule change and Amendment No. 1 thereto. The Commission received two comment letters.[11] The comments are summarized above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–095 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–2001.

All submissions should refer to File Number SR–NASD–2005–095. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2005–095 and should be submitted on or before January 24, 2006.

Counsel, Archipelago Trading Services, Inc., dated September 23, 2005.

[7] 17 CFR 242.612.

[8] 17 CFR 242.604.

[9] 15 U.S.C. 78o–3.

[10] 15 U.S.C. 78o–3(b)(6).

[11] *See supra* note 6.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E5–8196 Filed 12–30–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Compatibility Program Notice; Northwest Arkansas Regional Airport, Highfill, AR

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Northwest Arkansas Regional Airport under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act" and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 7, 2005, the FAA determined that the noise exposure maps submitted by Northwest Arkansas Regional Airport Authority under Part 150 were in compliance with applicable requirements. On December 2, 2005, the FAA approved the Northwest Arkansas Regional Airport noise compatibility program. Both of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport sponsor.

EFFECTIVE DATE: The effective date of the FAA's approval of the Northwest Arkansas Regional Airport noise compatibility program is December 2, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Tandy, Federal Aviation Administration, ASW–630, Fort Worth, TX 76193–0630; telephone (817) 222–5635. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Northwest Arkansas Regional Airport, effective December 2, 2005.

Under Section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expresses in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals or reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of fight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Fort Worth, Texas.

The Northwest Arkansas Regional Airport Authority submitted to the FAA on May 25, 2005, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August 4, 2000 through May 25, 2005. The Northwest Arkansas Regional Airport Authority noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 7, 2005. Notice of this determination was published in the **Federal Register** on June 22, 2005.

The Northwest Arkansas Regional Airport requested that the FAA evaluate and approve its submitted material as a noise compatibility program as described in Section 47504 of the Act. The FAA began its review of the program on June 2, 2005 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained two proposed actions for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective December 2, 2005.

Outright approval was granted for both of the specific program elements. The sponsor proposes to reevaluate the FAR Part 150 Study at the end of five years. In addition, if there is a significant change in either aircraft types or numbers of operations, or significant new facilities, the sponsor proposes to update the study prior to the end of the five-year timeframe. The sponsor also proposes to develop a Planners Forum type committee to review proposed land use changes in the Airport Influence Area. The committee could be composed of planners representing the various jurisdictions, regional planners, airport

[12] 17 CFR 200.30–3(a)(12).

staff and FAA Air Traffic Control representatives.

These determinations are set forth in detail in a Record of Approval signed by the FAA Associate Administrator for Airports on December 2, 2005. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Northwest Arkansas Regional Airport Authority. The Record of Approval also will be available on-line at *http://www.faa.gov/arp/environmental/14cfr150/index14.cfm.*

Issued in Fort Worth, Texas, December 23, 2005.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 05–24698 Filed 12–30–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Finding of No Significant Impact/Record of Decision (FONSI/ROD) and Department of Transportation Act Section 4(f) Determination for the Final Environmental Assessment, Erie International Airport, Erie, PA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that it has issued a Finding of No Significant Impact/Record of Decision (FONSI/ROD), effective December 8, 2005, for the Final Environmental Assessment that evaluated the proposed extension of Runway 6–24 at Erie International Airport (ERI), Tom Ridge Field, Erie, Pennsylvania.

SUPPLEMENTARY INFORMATION: The FAA has completed and issued its Finding of No Significant Impact/Record of Decision (FONSI/ROD) for the proposed extension of Runway 6–24 at Erie International Airport, Tom Ridge Field, Erie, Pennsylvania. The FONSI/ROD sets out the FAA's consideration of environmental and other factors and is based on the Final Environmental Assessment (EA) for the Proposed Extension of Runway 6–24 at Erie International Airport, Tom Ridge Field, Erie, Pennsylvania dated October 2005 and the Erie International Airport, Tom Ridge Field, Section 4(f) Report dated July 2005. Mitigation measures intended to minimize potential environmental impacts are identified in the FONSI/ROD and would become part of this Runway Extension Project. There are no environmental impacts associated with the preferred alternative that cannot be mitigated below FAA established significance thresholds.

The project considers the proposed extension of Runway 6–24 at Erie International Airport. The runway extension is needed to accommodate existing and future aviation demand as demonstrated in the recently completed airport master plan.

The Final EA presented the purpose and need for the project, a comprehensive analysis of the alternatives to the proposed project, including No-Action Alternative and potential impacts associated with the proposed development of the Runway 6–24 extension at ERI. The Final EA also identified the FAA's Preferred Alternative (Build Alternative 3) and described the proposed Mitigation Program for the Preferred Alternative that will be implemented by the Erie Municipal Airport Authority to off-set unavoidable environmental impacts.

Copies of the FONSI/ROD are available for review by appointment only at the following locations.

Please call to make arrangements for viewing:

Federal Aviation Administration Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, (717) 730–2830 and Erie Municipal Airport Authority, 4411 W. 12th Street, Erie, PA 16505–3091, (814) 833–4258.

FOR FURTHER INFORMATION CONTACT: Edward S. Gabsewics, CEP, Environmental Protection Specialist, Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, Telephone 717–730–2832. Documents reflecting this FAA action may be reviewed at these same locations.

Issued in Camp Hill, Pennsylvania, December 14, 2005.

Wayne T. Heibeck,

Manager, Harrisburg Airports District Office.

[FR Doc. 05–24700 Filed 12–30–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 202: Portable Electronic Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 202 Meeting: Portable Electronic Devices.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 202: Portable Electronic Devices.

DATES: The meeting will be held on January 30–31, February 1–3, 2006, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at Conference Rooms, 1828 L Street, NW., Suite 805, Washington, DC.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 202 Portable Electronic Devices meeting. The agenda will include:

- January 30:
  - Working Groups (WG) 1 through 4 meet.
  - WG–1, PED Characterization, Garmin Room
  - WG–2, Aircraft Path Loss and Test, with WG–3, Aircraft Susceptibility, MacIntosh–NBAA–Hilton/ATA Room
  - WG–4, Risk Assessment, Mitigation, and Process, Colson Board Room
- January 31 and February 2:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda, Review/Approve previous Common Plenary Summary, Review Open Action Items)
  - Update from Regulatory Agencies (FAA, UK–CAA, Canadian TSB, FCC or other)
  - Update from CEA PEDs Working Group by Doug Johnson of CEA
  - Update on CTIA Task Force on cell phones on airborne aircraft by Paul Guckian of QUALCOMM
  - Report on updates to GPS Sensitivity data of Table 6 by Robert Erlandson of OST Global
  - Report on cell phone demonstration on the 777–200LR Worldliner flight by Peter Tuggey of Aeromobile
  - Considerations to develop recommendation on Guidance for Airplane Design and Certification in support of Phase 2 TOR requirements by Dave Walen FAA CSTA EMI and Grey Dunn FAA ANM–111
  - Overview of comments received to proposed changes for Interim DO–294 update

- Plenary consensus on process to complete interim DO–294 document update, Working Groups comment disposition validation, action items to Working Groups, etc.
- Break-out sessions for Working Groups:
- Working Groups (WG) 1 through 5 meet.
- WG–1, PED Characterization, Garmin Room
- WG–2, Aircraft Path Loss and Test, with WG–3, Aircraft Susceptibility, MacIntosh-NBAA Hilton/ATA Room
- WG–4, Risk Assessment, Mitigation, and Process, Colson Board Room
- WG–5, Airplane Design and Certification Guidance, ARINC Conference Room
- Chairmen's strategy session with Work Group Leaders, MacIntosh-NBAA and Hilton-ATA Rooms Process check and readiness review for DO–294 document update
- February 2:
- Opening Remarks and Process Check
- Working Groups Report out on (Disposition of FRAC comments to DO–294 Interim document update; Issues identified, with recommendation to Plenary for consensus on closure of issues; Recommendations for Plenary consensus on document update final version; Schedule and TOR compliance assessment; Phase 2 work remaining: work plan and schedule)
- WG–1 (PEDs characterization, test and evaluation)
- WG–2 (Aircraft test and analysis)
- WG–3 (Aircraft systems susceptibility)
- Proposal for assessing aircraft systems susceptibility to Phase 2 technologies.
- WG–4 (Risk Assessment, Practical application, and final documentation)
- Collaboration with EUROCAE WG58
- WG–5 (Recommended Guidance for Airplane Design and Certification)
- Plenary consensus on Interim DO–294 update document recommendation to publish
- Updates to Phase 2 work statement, committee structure, work plan and schedule, including: Plan for access to material and organization of data in appendix CD for Phase 2 document Working Groups' teleconference and meeting schedule, plan for Phase 2 work completion
- Closing Session (Other Business, Date and Place of Next Meeting (April 4–6, 2006, Fourteenth Plenary at RTCA; July 10–14, 2006, Fifteenth Plenary at RTCA; October 16–20, 2006, Sixteenth and final Plenary at RTCA, Closing Remarks, Adjourn)
- Working Groups to complete action items and complete interim update DO–294 for recommendation to PMC to publish

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 23, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee

[FR Doc. 05–24699 Filed 12–30–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration, (NHTSA), Department of Transportation.

ACTION: Denial of a petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition (Defect Petition 05–002) submitted by Mr. Jordan Ziprin to NHTSA's Office of Defects Investigation (ODI), by letter dated July 8, 2005, under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety within the electronic throttle control (ETC) system in model year (MY) 2002 to 2005 Toyota and Lexus vehicles, or to reopen Preliminary Evaluation (PE) 04–021 whose subject was the ETC system on MY 2002 to 2003 Toyota Camry, Solara and Lexus ES models. In a letter dated August 18, 2005, Mr. Ziprin amended the petition to include additional allegations of interrelated brake and acceleration problems that allegedly result in inappropriate and uncontrollable vehicle accelerations in ETC equipped MY 2002 to 2005 Toyota and Lexus vehicles.

After reviewing the material cited by the petitioner and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issues raised by the petition is not warranted. The agency accordingly has denied the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Yon, Vehicle Control Division, Office of Defects Investigation, NHTSA, 400 7th Street, SW., Washington, DC 20590. Telephone 202–366–0139.

SUPPLEMENTARY INFORMATION: The petitioner owns a 2002 Toyota Camry with V6 engine that he purchased new in March 2002. On July 5, 2005, at approximately 8:45 p.m., the petitioner parked his vehicle in the driveway of a home near his residence in Phoenix, Arizona and exited the vehicle. Upon determining that he was at the wrong address, he re-entered the vehicle, started the engine, placed his foot on the brake pedal and shifted the gear selector to reverse. The petitioner states that he was steering clockwise as the vehicle drifted backwards from the driveway under its own power. He alleges that without application of the throttle the vehicle suddenly accelerated backwards at a high rate causing a loss of vehicle control. The vehicle appears to have moved in a circular path and came to rest with the driver's door abutted to a utility box situated on a concrete pad in front of the home adjacent to where the vehicle had been parked. According to the petitioner, he does not recall if he applied, or attempted to apply, the brake pedal during this incident. He stated, however, that he is sure he would not have applied the throttle since no application was necessary for vehicle movement. Although the exact distance and path the vehicle traveled during the incident is unknown, the vehicle damage [1] and incident site evidence suggests the vehicle yawed (rotated about a vertical axis) through a significant angle to reach its final rest position; this is consistent with the petitioner's statement that the vehicle accelerated at a high rate and is an indication that a significant throttle opening occurred. Additionally, the petitioner describes another incident [2] that happened in April 2002, within the first few weeks of his ownership, stating that he did not report the incident at that time because he felt that his unfamiliarity with the vehicle may have caused an error that lead to the incident.

[1] Repair damage for the petitioner's vehicle from this incident was estimated at $3,000.

[2] The incident occurred while the petitioner was reversing the vehicle at a gas station local to his residence.

ODI visited the location of both incidents and performed an inspection of the petitioner's vehicle on October 5, 2005, as described in the December 15, 2005 memo to file.' [3].

The petitioner has submitted several letters to ODI [3] that contain further descriptions of his two incidents, discussions of his review of related information including information from ODI's complaint and investigation databases, and lists of Vehicle Owner Questionnaire (VOQ) numbers (reports) with comments describing his analysis of each. In total, ODI recognizes 1,172 distinct VOQ reports that the petitioner has obtained from ODI's database, reviewed and submitted to the agency.[4] The reports involve MY 2002 to 2005 Toyota products,[5] including 4 Lexus and 15 Toyota models, defining a vehicle population of some 7.1 million vehicles.[6]

In its analysis of the petitioner's data, ODI noted that many of the cited reports involved complaints related solely to the brake system. Accordingly, ODI performed an analysis of the ODI complaint database for all MY 2002 to 2005 light vehicles for reports coded to the brake system component category. With the exception of two products,[7] the analysis showed that the vehicles identified by the petitioner were not over-represented in the complaint database. Accordingly, ODI determined that there was insufficient evidence to support the existence of a brake system-related defect in these vehicles. Additionally, ODI determined that many of the products identified by the petitioner were not manufactured with ETC systems, but were instead built with mechanical throttle control systems (typically cable based). In fact, for the four MYs cited by the petitioner, only the Toyota Camry and Lexus ES models were all manufactured with ETC. For these reasons, ODI restricted its analysis to petitioner reports involving MY 2002 to 2005 Camry, Solara, and ES models (identified henceforth as the subject vehicles) that alleged an abnormal throttle control event. There are approximately 1.9 million subject vehicles in this population.[6] The design and operation of the subject vehicle's ETC system, including the diagnostic and safety control system, is discussed in the closing report for PE04–021 and in information Toyota provided during PE04–021 and this petition.[3]

For the total of 1,172 reports to which the petitioner has directed our attention, and after excluding the reports discussed above, ODI identified 432 [8] unique subject vehicle VOQ reports involving throttle control concerns originating from ETC equipped vehicles; this appears to be a relatively comprehensive representation of the ODI complaint database regarding this issue on the subject vehicles. Generally speaking, these reports fall into one of three categories; (1) those that involve engine management system (EMS) related driveability concerns, (2) those that involve throttle control related concerns where the brake system was reportedly ineffective, and (3) those that involve throttle control related concerns where the effectiveness of the brake system was unknown or ambiguous.

ODI found that 171 of the 432 reports (40%) involved driveability concerns. These reports describe a condition where the operator intentionally applies the throttle pedal, in expectation that the vehicle will accelerate, and then experiences a delay or hesitation in vehicle response.[9] Complainants allege the delay lasts from 2 to 5 seconds and that during that period the operator further depresses the accelerator; this results in a greater than anticipated vehicle response which is disconcerting to vehicle occupants.[10] Many reports allege that this condition is a safety problem. ODI has interviewed several complainants and found that while they express concern and frustration over the issue they nevertheless continue to operate the vehicle on a daily basis. No crashes, injuries or fatalities have been alleged to result from this condition, despite the large subject vehicle population and years of exposure. These complaints, which relate to delayed throttle response, involve vehicle response to intentional driver commands. Therefore, ODI does not consider this concern to be related to the allegations raised by the petitioner and these reports do not provide support for the investigation requested by the petitioner.

Similarly, 93 of the reports (~20%) allege throttle control concerns where the brake was reported by the operator to be ineffective at controlling vehicle movement despite brake application, indicating that, if the reports are assumed to be correct, simultaneous failures of the throttle control and brake systems must have occurred.[11] These incidents, sometimes referred to as "sudden or unintended acceleration" incidents,[12] occurred under various operating conditions and often resulted in a crash with alleged injuries and or fatalities. ODI has interviewed 24 of the complainants [13] and learned that most vehicles were subsequently inspected by dealership, manufacturer and or independent technical personnel who were unable to discover any evidence of a failed or malfunctioning vehicle component or system or any other vehicle condition that could have contributed to the incident.[14] Additionally, for reports where an interview was not conducted, many state that no vehicle-based cause was ever found in post-incident vehicle inspections. For these 93 reports, the complaint rate of 4.9/100k vehicles is similar to that of the general vehicle population and is unremarkable.[15] The complaint trend is also constant and neither increasing or decreasing. Accordingly, because these reports do not appear to indicate a distinct safety defect that would warrant investigation

[3] The documents are available for public review at ODI's Web site: *http://www-odi.nhtsa.dot.gov.*

[4] This count does not include reports contained in correspondence received after November 30, 2005.

[5] A "product" is defined as a distinct make, model and model year vehicle.

[6] Vehicle production was estimated from Early Warning Reporting data submissions.

[7] The MY 2004 RX330 was the subject of PE05–009 and a service action Toyota subsequently conducted. The MY 2002 Toyota Tundra product prompted a number of brake disc-borne vibration complaints that ODI reviewed but did not find to be sufficient evidence to indicate the existence of a safety related defect.

[8] There were a total of 468 reports, but duplicates (from the same complainant) were eliminated.

[9] This is contrary to the other throttle control categories ODI established and to what the petitioner alleges, i.e., that the accelerator opened by itself and the vehicle accelerated without driver input.

[10] This issue is the subject of a Toyota technical service bulletin intended to address the driveability condition.

[11] ODI notes that reports of this nature are not unique to the subject vehicles or to Toyota products.

[12] Sudden or unintended acceleration events have been the subject of many public and private studies which generally conclude that, absent any evidence to support a vehicle-based failure, the unavoidable explanation is that driver error—the inadvertent application of the accelerator rather than the brake—is the cause of the incidents. For further information regarding sudden and unintended acceleration events, see DPs 99–004, 03–003 and 03–007 including the **Federal Register** notices and the notes and references contained therein.

[13] A comprehensive driver interview was used to ascertain specific detail about each incident. Based on the results of these interviews, ODI would caution readers of these complaints regarding conclusions based solely on the content of the complaint description.

[14] A brake system failure that results in brake loss is highly likely to be easily detectable after it occurs.

[15] For example, two throttle control investigations are currently underway. For Engineering Analysis (EA) 05–014 the complaint rate is 230/100k, for EA05–021 the rate is 685/100k. One of the more notable sudden acceleration investigations involved MY 1978—1987 Audi products; the complaint rate in this investigation was ~600/100k. Also, see complaint rates discussed in the **Federal Register** notices associated with Defect Petitions (DP) 03–003 and 03–007.

and are factually distinguishable from the specific facts of petitioner's case, the reports do not provide support for the investigation requested by the petitioner.

The remaining 168 reports (~40%) are similar to those investigated during PE04–021 and to the situation that petitioner experienced. These reports typically describe incidents where a vehicle equipped with ETC is being maneuvered at slow speed in a close quarter situation, such as pulling into or out of a parking space, at which point the operator alleges that the vehicle accelerates without driver input and crashes.[11,16] The crashes are generally low speed crashes, with minor or no injuries. In the aftermath, operators are unsure of whether the brakes were applied or not, sometimes stating that there was insufficient time to use the brake pedal. The common thread in these reports is that the vehicle accelerated, a crash occurred, and the operator believes an uncommanded acceleration caused it.

Prompted by consumer complaints and DP04–04, PE04–021 investigated the ETC system on MY 2002 and 2003 subject vehicles and involved many of the same VOQ reports identified by the petitioner. ODI opened the investigation to determine if the system could be the cause of complaints alleging the engine speed increased, or failed to decrease, when the accelerator pedal was not depressed. During the course of the investigation, ODI reviewed VOQ and manufacturer reports, inspected two complaint vehicles, reviewed relevant Toyota technical documentation, analyzed Toyota's responses to an information request letter, conducted a limited control pedal assessment and attended a Toyota technical presentation that included the assessment of two demonstration vehicles. The investigation closed in July, 2004, without the identification of a defect trend, and with the agency noting that it would take further action if warranted.

With regard to the 168 reports recently identified by the petitioner, ODI has now interviewed [12] 110 of these 168 complainants (65%) including 23 of the 29 (~80%) MY 2004 to 2005 complainants. Here again, these interviews revealed that most vehicles were subsequently inspected by dealership, manufacturer and/or independent technical personnel and no malfunction or failure explaining these incidents was identified. Many vehicles involved in these incidents have been placed back in service and have accumulated significant service experience without any recurrence.[17] For these 168 reports, the complaint rate of 8.8/100k vehicles is comparable to rates for similar vehicles and the complaint trend is declining.[18] None of this evidence suggests that a vehicle-based cause may exist. Therefore, the reports have ambiguous significance and do not constitute a basis on which any further investigative action can be initiated.[19]

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect as alleged by the petitioner at the conclusion of the requested investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The agency will take further action if warranted by future circumstances.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: December 23, 2005.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E5–8151 Filed 12–30–05; 8:45 am]

BILLING CODE 4910–59–P

[16] ODI notes that driver error is one plausible explanation for many of these incidents.

[17] This observation does not support the existence of a vehicle-based causal explanation.

[18] This is partially due to the effects of publicity surrounding PE04–021.

[19] For this reason, these reports will not be reflected in the close resume.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–20288, Notice 2]

Cross Lander USA; Grant of Application for a Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of Application for a Temporary Exemption from S4.2 and S14 of Federal Motor Vehicle Safety Standard No. 208.

SUMMARY: This notice grants the Cross Lander USA ("Cross Lander") application for a temporary exemption from the requirements of S4.2 and S14 of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection.* The exemption applies to the Cross Lander 244X vehicle line. In accordance with 49 CFR part 555, the basis for the grant is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

DATES: The exemption from S4.2 and S14 of FMVSS No. 208, *Occupant crash protection,* is effective from December 1, 2005 until May 1, 2008.

FOR FURTHER INFORMATION CONTACT: George Feygin in the Office of Chief Counsel, NCC–112, (Phone: 202–366–2992; Fax 202–366–3820; E-Mail: *George.Feygin@nhtsa.dot.gov*).

I. Background

Cross Lander, a Nevada corporation, owns a Romanian vehicle manufacturer ARO, S.A., which manufactures multipurpose passenger vehicles built for extreme off road conditions.[1] According to the petitioner, this vehicle was formerly used by Romanian military. Cross Lander intends to import and distribute this vehicle, named the Cross Lander 244X ("244X"), in the United States. A detailed description of the 244X is set forth in their petition (Docket No. NHTSA–2005–20288–1). For additional information on the 244X, please go to *http://www.crosslander4x4.com/*.

In preparing the 244X for sale in the United States, Cross Lander anticipated that the Gross Vehicle Weight Rating (GVWR) of the 244X would exceed 5,500 pounds, which would exclude the vehicles from the air bag requirements specified in S4.2 and S14 of FMVSS No. 208. However, because of an unexpected change in the choice of engine used in the 244X, the GVWR of the 244X is less than 5,500 pounds, and it is thus subject to the requirements in S4.2 and S14. Because a heavier vehicle would not have been subject to the applicable air bag requirements, the petitioner was not prepared to equip the 244X with a suitable air bag system. According to the petitioner, the cost of making the 244X compliant with FMVSS No. 208 on short notice is beyond the company's current capabilities. Thus, Cross Lander requests a three-year exemption in order to develop a compliant automatic restraint system.

As described below, the petitioner seeks a temporary exemption because despite its good faith efforts, it cannot bring the 244X into compliance with the applicable air bag requirements without

[1] To view the petition and other supporting documents, please go to: *http://dms.dot.gov/search/searchFormSimple.cfm* (Docket No. NHTSA–2005–20288).

incurring substantial economic hardship.

II. Why Compliance Would Cause Substantial Economic Hardship and How Cross Lander Has Tried in Good Faith To Comply With FMVSS No. 208 and the Bumper Standard

Because the "advanced" air bag requirements specified in S14 of FMVSS No. 208 become effective September 1, 2006, Cross Lander intends to concentrate all its efforts on developing an "advanced" air bag system. Cross Lander chose Siemens as its air bag supplier. According to the petitioner, equipping the 244X with advanced air bags will require significant time and resources necessary to redesign the vehicle interior and for laboratory testing and sensor calibration. The estimated cost of developing an advanced air bag system is $2 to $3 million.[2] Further, the project would take approximately 24 months and cannot begin until Cross Lander is assured of an immediate source of revenue. That is, because Cross Lander has no current vehicles for sale in the United States, the petitioner states that it is impossible to finance this project without a source of revenue. The petitioner contends that a three-year exemption from the current, as well as the "advanced" air bag requirements would allow it to successfully develop a suitable air bag system.

The petition and supplements filed by the petitioner indicate that Cross Lander has invested over $3 million into the company. According to the petitioners, the total investment will reach $34,000,000 by the time the 244X will be offered for sale in the U.S. The petitioner states that an immediate exemption is crucial to the survival of Cross Lander because it must begin selling 244X immediately in order to generate a cash flow that can support the company's continued existence.

The petitioner's financial statements indicate a net loss of $673,079 for the fiscal year ending 12/31/2002, and a net loss of $523,676 for the fiscal year ending 12/31/2003. The petitioner stated that its 2004 net loss is $5,069,185.00. The petitioner provided the following summary of the financial consequences of failure to obtain a temporary exemption from the requirements of FMVSS No. 208:

2005	2006	2007
Assuming Grant of Petition		
Net loss of $108,000	Net profit of $14,000,000	Net profit of $30,000,000
Assuming Denial of Petition		
Net loss of $8,500,000	Net loss of $8,000,000	Net loss of $8,500,000

III. Comments Regarding the Cross Lander Petition.

The National Highway Traffic Safety Administration (NHTSA) published a notice of receipt of the application on February 9, 2005, and afforded an opportunity for comment.[3] The agency received two comments from Public Citizen.[4] A short description of the comments follows.

Public Citizen argues that the petitioner has not sufficiently demonstrated financial hardship, and that a grant of exemption would not be in the public interest. First, Public Citizen argues that the financial burdens associated with complying with the air bag requirements are not covered by the "substantial economic hardship" statutory provision. Second, Public Citizen argues that because a financial hardship exemption could affect a large number of vehicles, a grant of the petition would not be in the public interest. Third, Public Citizen argued that the petitioner downplayed the safety benefits associated with air bags. Fourth, Public Citizen expressed concerns that the 244X vehicles would be used primarily for common transportation by the vast majority of buyers, and not off-road, as indicated by the petitioner.

IV. The Agency's Findings

Cross Lander is not significantly different from small volume manufacturers who have received temporary exemptions in the past on hardship grounds. Although Cross Lander has negotiated with an air bag manufacturer for the design and testing of an air bag system for its vehicle, they contend that completion of the air bag development is not economically viable without additional revenue generated through immediate sales of the 244X in the United States. In evaluating the petitioner's current situation, the agency finds that to require immediate compliance with FMVSS No. 208 would cause the petitioner substantial economic hardship, and could even result in the company going out of business. The agency concludes that the petitioner's application for a temporary exemption demonstrates the requisite financial hardship.

The term of this exemption will be limited to less than three years and the agency anticipates that the 244X will be sold in limited quantities. In total, we anticipate that Cross Lander will not sell

[2] See Siemens Report, Attachment 2 (Docket No. NHTSA–2005–20288–3).

[3] See 70 FR 6924.

[4] See Docket Nos. NHTSA–2005–20288–7, NHTSA–2005–20288–9.

more than 9,000 vehicles.[5] We anticipate that with the help of revenues derived from U.S. sales, Cross Lander will be able to introduce a fully compliant vehicle by the time this exemption expires. The agency notes that, according to the petitioner, the 244X complies with all other applicable Federal motor vehicle safety standards.

We note that under 49 CFR 555.9(b) and (c), the petitioner will be required to indicate on the vehicle certification label, and on a separate label affixed to the windshield or the side window, that the 244X does not comply with FMVSS No. 208. In addition to the required labeling, the petitioner agreed to affix additional labeling to each vehicle. This supplemental labeling would read as follows:

Notice

THIS VEHICLE DOES NOT CONTAIN AN AIR BAG AND WAS EXEMPTED FROM FEDERAL MOTOR VEHICLE SAFETY STANDARD 208 REGARDING OCCUPANT PROTECTION WITH AIR BAGS. IT WAS EXEMPTED PURSUANT TO NHTSA EXEMPTION NO * * *

WARNING !!

TO AVOID SERIOUS INJURIES IN ALL TYPES OF CRASHES, ALWAYS WEAR YOUR SAFETY BELTS

The supplemental labeling will take the place of air bag warning labels required by FMVSS 208, and will be affixed to the sun visor.[6]

Contrary to Public Citizen's comments, we believe that the petitioner has demonstrated financial hardship. As a part of its application, the petitioner submitted detailed financial information. While most of this information has been granted confidential treatment and is not being published in this notice, the agency examined all the information submitted to the agency and concluded that the petitioner has experienced financial hardship as evidenced by net losses in all of the past 3 years. We further note that an exemption from the air bag requirements is consistent with the agency's previous financial hardship exemptions granted to Lotus, Saleen, and Spyker.[7] Finally, we note that the information submitted by the petitioner indicates that sales of their vehicles are unlikely to exceed 9,000 vehicles for the duration of the exemption.

Public Citizen made a variety of arguments against granting this exemption. However, we believe that our decision is consistent with Congressional intent to allow the Secretary to temporarily exempt small volume manufacturers from a given standard when compliance with that standard would cause substantial economic hardship.

In consideration of the foregoing, it is hereby found that compliance with the requirements of Paragraphs S4.2 and S14 of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection* would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. It is further found that the granting of an exemption would be in the public interest.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), Cross Lander is granted NHTSA Temporary Exemption No. EX 05–3, from Paragraphs S4.2 and S14 of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection.* The exemption shall remain in effect until May 1, 2008.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: December 23, 2005.

Gregory Walter,

Senior Associate Administrator for Policy and Operations.

[FR Doc. E5–8152 Filed 12–30–05; 8:45 am]

BILLING CODE 4910–59–P

[5] *See* NHTSA–2005–20288–11.

[6] *See* Docket No. NHTSA–2005–20288–3, pages 9 and 11.

[7] We also note that Spyker, like Cross Lander, was a start-up manufacturer without prior U.S. presence.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 237X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Baltimore County, MD

On December 14, 2005, Norfolk Southern Railway Company (NSR) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–05 to abandon its freight operating rights and rail freight service over 12.8 miles of a line of railroad between milepost UU–1.0 at Baltimore, MD, and milepost UU–12.8 at Cockeysville, MD.[1] The line traverses U.S. Postal Service Zip Codes 21030, 21065, and 21201 and includes the stations of Lutherville, Timonium, Texas, and Cockeysville. NSR states that it will continue to provide rail service to the station of Baltimore.

In addition to an exemption from 49 U.S.C. 10903, NSR seeks exemption from 49 U.S.C. 10904 [offer of financial assistance (OFA) procedures] and 49 U.S.C. 10905 [public use conditions]. In support, NSR states that the right-of-way is owned by the Maryland Department of Transportation (MDOT),[2] and MDOT, through MTA, will continue to use the line for the public purpose of providing light rail commuter passenger service. These requests will be addressed in the final decision.

The line does not contain Federally granted rights-of-way. Any documentation in NSR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 3, 2006.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption, unless the Board grants the requested exemption from the OFA process. Each offer must be accompanied by a $1,200 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Unless the Board grants the requested exemption from the public use provisions, any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking[3] under 49 CFR 1152.29 will be due no later than

[1] Pursuant to the Conrail Transaction Agreement approved by the Board in 3 S.T.B. 196 (1998), certain Consolidated Rail Corporation (Conrail) assets, including Conrail's interest in the line, were allocated to Pennsylvania Lines, LLC (PRR). PRR's assets, in turn, were leased to and operated by NSR under the terms of an allocated assets operating agreement between PRR and NSR. NSR acquired the right to operate over the line from Conrail through merger of NSR with Conrail's former subsidiary, PRR, on August 27, 2004. *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (Sub-No. 94), Decision No. 2 (STB served Nov. 7, 2003).

[2] MDOT describes itself as the umbrella organization for the Maryland Transit Administration (MTA) and other Maryland governmental transportation agencies. MDOT and MTA are government agencies sponsoring or operating commuter mass transit service and have not held, do not hold, and do not intend to hold themselves out to provide rail freight service over the line.

[3] NSR indicates that, because of the continuing use of the line for light rail commuter passenger operations by MTA, NSR will not consent to a trail use negotiation condition.

January 23, 2006. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–290 (Sub-No. 237X), and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, and (2) James R. Paschall, Senior General Attorney, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–2191. Replies to NSR's petition are due on or before January 23, 2006.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: December 22, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–24626 Filed 12–30–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 23, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 2, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1954.

Type of Review: Extension.

Title: Health Coverage Tax Credit Registration Update Form.

Form: IRS form 13704.

Description: Internal Revenue Code Section 35 and 7527 enacted by Public Law 107–210 require the Internal Revenue Service to provide payments of the HCTC to eligible individuals beginning August 1, 2003. The IRS will use the Registration Update form to ensure, that the processes and communications for delivering these payments help taxpayers determine if they are eligible for the credit and understand what they need to do to continue to receive it.

Respondents: Individuals or households, Federal Government, State, local or tribal government.

Estimated Total Burden Hours: 1,100 hours.

OMB Number: 1545–1955.

Type of Review: Extension

Title: Request to Revoke Partnership Level Tax Treatment Election

Form: IRS form 8894

Description: IRC section 6231(a)(1)(B)(ii) allows small partnerships to elect to be treated under the unified audit and litigation procedures. This election can only be revoked with the consent of the IRS. Form 8894 will provide a standardize format for small partnership to request this revocation and for the IRS to process it.

Respondents: Business or other for-profit, Individual or households.

Estimated Total Burden Hours: 186 hours.

OMB Number: 1545–1959.

Type of Review: Extension.

Title: Contributions of Motor Vehicles, Boats, and Airplanes.

Form: IRS form 1098–C.

Description: Section 884 of the American Jobs Creation Act of 2004 (Pub. L. 108–357) added new paragraph 12 to section 170(f) for contributions of used motor vehicles, boats, and airplanes. Section 17(f)(12) requires that a donee organization provide an acknowledgement to the donor of this type of property and is required to file the same information to the Internal Revenue Service. New form 1098–C may be used as the acknowledgement and it or an acceptable substitute, must be filed with the IRS.

Respondents: Not-for-profit institutions, State, local or tribal Government.

Estimated Total Burden Hours: 1,000 hours.

OMB Number: 1545–0916.

Type of Review: Extension.

Title: EE–96–85 (NPRM) and EE–63–84 (Temporary regulations) Effective dates and other issues arising under Employee Benefit provisions of the Tax Reform Act of 1984.

Description: These temporary regulations provide rules relating to effective dates and other issues arising under sections 91, 223, and 511–561 of the Tax Reform Act of 1984.

Respondents: Business or other for-profit, Individuals or households, not-for-profit institutions.

Estimated Total Burden Hours: 4,000 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E5–8197 Filed 12–30–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0098]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public

comment in response to the notice. This notice solicits comments on information needed to determine a veteran's spouse, surviving spouse, or child eligibility for Survivors' and Dependents' Educational Assistance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 6, 2006.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to "OMB Control No. 2900–0098" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Survivors' and Dependents' Educational Assistance (Under Provisions of Chapter 35, Title 38, U.S.C.), VA Form 22–5490.

OMB Control Number: 2900–0098.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 22–5490 is completed by a veteran's spouse, surviving spouse, or children to apply for Survivors' and Dependents' Educational Assistance (DEA) benefits. DEA benefits are payable if the veteran is permanently and totaled disabled, died as a result of a service-connected disability, missing in action, capture or detained for more than 90 days. VA uses the data collected to determine the claimant's eligibility to DEA benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 28,000 hours.

a. 8,000 Electronically—30 minutes;

b. 32,000 Paper Copy—45 minutes.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 40,000.

Dated: December 20, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–8153 Filed 12–30–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government-Owned Invention Available for Licensing

AGENCY: Office of Research and Development.

ACTION: Notice of government-owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or Cooperative Research and Development Agreements (CRADA) Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Amy E. Centanni, Department of Veterans Affairs, Director, Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue, NW., Washington, DC 20420; fax: 202–254–0473; e-mail at: *amy.centanni@mail.va.gov.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: U.S. Patent Application No. 10/486,593 "Method of Preventing the Occurrence of Symptoms of Psychosis."

Dated: December 23, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

[FR Doc. E5–8154 Filed 12–30–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a VA National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Public Law 104–275 was enacted on October 9, 1996. It allowed the Department of Veterans Affairs (VA) to provide a monetary allowance towards the private purchase of an outer burial receptacle for use in a VA national cemetery. Under VA regulation (38 CFR 38.629), the allowance is equal to the average cost of Government-furnished graveliners less any administrative costs to VA. The law provides a veteran's survivors with the option of selecting a Government-furnished graveliner for use in a VA national cemetery where such use is authorized.

The purpose of this Notice is to notify interested parties of the average cost of Government-furnished graveliners, administrative costs that relate to processing a claim, and the amount of the allowance payable for qualifying interments that occur during calendar year 2006.

FOR FURTHER INFORMATION CONTACT: Lisa Ciolek, Capital and Performance Budgeting (41B1B), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: 202–273–5161 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(e)(3) and Public Law 104–275, section 213, VA may provide a monetary allowance for the private purchase of an outer burial receptacle for use in a VA national cemetery where its use is authorized. The allowance for qualified interments that occur during calendar year 2006 is the average cost of Government-furnished graveliners in fiscal year 2005, less the administrative costs incurred by VA in processing and paying the allowance in lieu of the Government-furnished graveliner.

The average cost of Government-furnished graveliners is determined by

taking VA's total cost during a fiscal year for single-depth graveliners that were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation excludes both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners. Using this method of computation, the average cost was determined to be $171.97 for fiscal year 2005.

The administrative costs incurred by VA consist of those costs that relate to processing and paying an allowance in lieu of the Government-furnished graveliner. These costs have been determined to be $9.75 for calendar year 2006.

The net allowance payable for qualifying interments occurring during calendar year 2006, therefore, is $162.22.

Approved: December 21, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E5–8142 Filed 12–30–05; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
January 3, 2006

Part II

Department of Homeland Security

Preparedness Directorate; Protective Action Guides for Radiological Dispersal Device (RDD) and Improvised Nuclear Device (IND) Incidents; Notice

DEPARTMENT OF HOMELAND SECURITY

Z–RIN 1660–ZA02

Preparedness Directorate; Protective Action Guides for Radiological Dispersal Device (RDD) and Improvised Nuclear Device (IND) Incidents

AGENCY: Preparedness Directorate, Department of Homeland Security.

ACTION: Notice of draft guidance for interim use with request for comment.

SUMMARY: The Preparedness Directorate of the Department of Homeland Security (DHS) is issuing guidance entitled, "Application of Protective Action Guides for Radiological Dispersal Devices (RDD) and Improvised Nuclear Device (IND) Incidents'' for Federal agencies, and as appropriate, State and local governments, emergency responders, and the general public who may find it useful in planning and responding to an RDD or IND incident. The guidance recommends "protective action guides" (PAGs) to support decisions about actions that may need to be taken to protect the public when responding to or recovering from an RDD or IND incident. It also outlines a process to implement the recommendations and discusses operational guidelines that may be useful in the implementation of the PAGs. The full text of the document is included in this Notice. This guidance is provided for interim use and will be revised based on comments received. The Preparedness Directorate is seeking input on the appropriateness, implementability and completeness of the guidance.

DATES: The draft guidance contained in this notice is released for interim use effective January 3, 2006. Comments on this draft guidance should be received on or before March 6, 2006.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2004–0029 and Z–RIN 1660–ZA02, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *FEMA-RULES@dhs.gov*. Include Docket Number DHS–2004–0029 and Z–RIN 1660–ZA02 in the subject line of the message.
- Fax: 202–646–4536.
- Mail/Hand Delivery/Courier: Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street, SW., Washington, DC 20472.

Instructions: All submissions received must include the agency name and docket number (if available) or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. Submitted comments may also be inspected at 500 C Street, SW., Room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Craig Conklin, Chief, Nuclear and Chemical Hazards Branch, Preparedness Division, Department of Homeland Security, NAC, Washington, DC 20528, 703–605–1228 (phone), 703–605–1198 (facsimile), or *craig.conklin@dhs.gov* (e-mail.)

SUPPLEMENTARY INFORMATION:

(a) Introduction

(1) Background on the Guidance

Since the terrorist events in the United States on September 11, 2001, there has been increased worldwide effort to avert and respond to terrorist attacks. In addition, based on intelligence information, the potential for terrorist attacks in the United States involving radiological materials or a nuclear device has grown. The Federal Government has responded with an aggressive approach to planning and preparedness, utilizing the resources and expertise found in departments and agencies across the government. Prior to September 11, radiological emergencies were considered bounded by potential nuclear power plant accidents. However, new terrorist scenarios have emerged that offer new and different response challenges.

In order to prepare for potential attacks, DHS held a Federal interagency "dirty bomb" exercise as part of the Top Officials–2 Exercise (TOPOFF–2) in Seattle, Washington, May 12–16, 2003. The exercise brought to light a number of issues in Federal radiological emergency response and recovery. One of the most important issues raised was how long-term site restoration and cleanup would be accomplished following an act of radiological terrorism. This question was part of a larger discussion of Federal Government protective action recommendations following acts of radiological or nuclear terror. The Environmental Protection Agency (EPA) published PAGs in the "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents" (EPA 400–R–92–001, May 1992), in coordination with the Federal Radiological Preparedness Coordinating Committee (FRPCC). However, the EPA Manual, often called the PAG Manual, was not developed to address response actions following radiological or nuclear terrorist incidents. Also, the PAG Manual does not address long-term cleanup.

In 2003, DHS tasked an interagency working group to address these issues. The working group consisted of senior subject matter experts in radiological/nuclear emergency preparedness, response, and consequence management. The following Federal departments and agencies were represented on the working group: DHS, EPA, Department of Commerce (DOC), Department of Energy (DOE), Department of Defense (DOD), Department of Labor (DOL), Department of Health and Human Services (HHS), and the Nuclear Regulatory Commission (NRC).

The result of the interagency working group process is the following Federal consensus guidance entitled, "Application of Protective Action Guides for Radiological Dispersal Device (RDD) and Improvised Nuclear Device (IND) Incidents." (June 1, 2004). In it, the Federal agencies support the use of existing early and intermediate phase PAGs, as found in the EPA PAG Manual, for acts of radiological and nuclear terrorism. The working group also developed late phase guidance, also contained in the consensus guidance, for the cleanup and restoration of a site following an act of radiological or nuclear terrorism that is based on the principle of site-specific optimization.

In developing this draft guidance, DHS convened a focus group of representatives from 13 State agencies with expertise in radiological emergency response and consequence management. The State representatives were asked to review the draft guidance and provide detailed comments on its content, structure, and presentation. DHS was particularly interested in how States would make use of the guidance and how well the guidance would serve to facilitate Federal and State (or local) government interactions during a radiological terrorism response. Overall, the State representatives responded very positively to the guidance. A number of improvements suggested by the States were incorporated into the draft guidance being published today.

The purpose of this guidance is to aid Federal decision makers in protecting the public and emergency responders from the effects of radiation during an emergency and to provide guidelines and a process for site cleanup and recovery following an RDD or IND incident. This guidance is designed to

be compatible with the National Incident Management System (NIMS) and the National Response Plan (NRP).

This guidance presents levels of radiation exposure at which the Federal Government recommends that actions be considered to avoid or reduce radiation dose to the public from an RDD or IND incident. The intended audience for this document is principally Federal Government emergency response planners and officials; however, this document should also be useful to State and local governments for response planning. The protective action guides incorporate guidance and regulations published by the EPA, the Food and Drug Administration (FDA), and the Occupational Safety and Health Administration (OSHA), and address key health protection questions faced in the various phases (early, intermediate, and late) of response to an incident.

These PAGs are not absolute standards and are not intended to define "safe" or "unsafe" levels of exposure or contamination. Rather, they represent the approximate levels at which the associated protective actions are recommended. This guidance may also be used by State and local decision makers, and provides flexibility to be more or less restrictive as deemed appropriate based on the unique characteristics of the incident and local considerations.

This guidance is not intended for use at site cleanups occurring under other statutory authorities such as EPA's Superfund program, the NRC's decommissioning program, or other Federal or State cleanup programs. In addition, the scope of this guidance does not include situations involving United States nuclear weapons accidents.

(2) Characteristics of RDD and IND Incidents

An RDD is any device that causes the purposeful dissemination of radioactive material across an area without a nuclear detonation. The mode of dispersal typically described as an RDD is an explosive device coupled with radioactive material. An RDD poses a threat to public health and safety and the environment through the spread of radioactive materials, and any explosive device presents an added immediate threat to human life and property. Other means of dispersal, both passive and active, may be employed. Dissemination of radioactive material not carried out via a device would still be treated like an RDD by responders and decision makers.

There is a wide range of possible consequences that may result from an RDD depending upon the type and size of the device, the type and quantity of radioactive material, and how dispersion is achieved. The consequences of an RDD may range from a small, localized area (e.g., a street, single building or city block) to large areas, conceivably several square miles. However, most experts agree that the likelihood of a large impacted area is low. In most plausible scenarios, the radioactive material would not result in acutely harmful radiation doses and the public health concern from the radioactive materials would likely focus on the chronic risk of developing cancer among exposed individuals. Hazards from fire, smoke, shock, shrapnel (from an explosion), industrial chemicals and other chemical or biological agents may also be present.

An IND is an illicit nuclear weapon bought, stolen, or otherwise originating from a nuclear State, or a weapon fabricated by a terrorist group from illegally obtained fissile nuclear weapons material that produces a nuclear explosion. The guidance does not apply to acts of war between nation-states involving nuclear weapons. The nuclear yield achieved by an IND produces extreme heat, powerful shockwaves, and prompt radiation that would be acutely lethal for a significant distance. It also produces potentially lethal radioactive fallout, which may spread far downwind and deposit over very large areas. An IND would result in catastrophic loss of life, destruction of infrastructure and contamination of a very large area. If nuclear yield is not achieved, the result would likely resemble an RDD in which fissile weapons material was dispersed locally.

(3) RDD and IND Incidents v. Accidents

Acts of radiological and nuclear terrorism differ from radiological and nuclear accidents in several key ways. Accidents occur almost exclusively at well-characterized fixed facilities, or along prescribed transit routes. Facility operators have a good understanding of the kinds of radiological incidents that may occur, and have developed safeguards, plans, and procedures to deal with them. Exercises are regularly held to practice emergency plans and procedures, and improvements are made where necessary. Local communities, such as those around nuclear power plants (NPPs) or weapons production facilities, are informed and involved in emergency planning, including development of public communication strategies, practicing shelter-in-place, and orderly evacuation along prescribed routes. Accidents may also occur along transit routes, but these are relatively rare and substantial contingency planning and exercising occurs for transportation accidents as well.

Acts of radiological and nuclear terrorism, on the other hand, may occur virtually anywhere. Major cities are potential targets of such incidents. The number of potential targets and the diverse circumstances of potential attacks make focused response planning almost impossible. Even a rural setting could fall victim, if for example, a device were to go off prematurely. Most nuclear facilities are located in semi-rural settings around which the number of people affected would be less and the amount of critical infrastructure impacted is likely to be less.

The scope of potential accidents is limited and fairly well understood. Facilities tend to have fixed quantities of licensed radioisotopes or well characterized types of radionuclides on site that may be released in an accident. The number of ways accidents can occur (within reason) is limited, making possible effective contingency planning and improved safety. Accidents of any magnitude are limited to a relatively small number of facilities, and these tend to have highly trained personnel, advanced security, advanced process designs with the most rigorous safeguards and back-up systems, and the most aggressive contingency planning. The design of commercial nuclear power reactors in the United States, for example, precludes a Chernobyl-type of nuclear accident. Smaller facilities, such as radiopharmaceutical or radiation source manufacturers, generally possess much less radioactive material (or only short half-life materials) that may be involved in an accidental release.

Finally, an RDD or IND incident may be initiated without any advance warning and the release would likely have a relatively short duration. With a major NPP accident, the most severe type of incident previously considered, there is likely to be several hours or days of warning before the release starts and the release may be drawn out over many hours. The benefit of time is critical. Advance notice affords time to make appropriate decisions, communicate to the public, and execute orderly evacuation, if necessary, or other protective actions. This difference means that most early and some intermediate phase protective actions must be made more quickly and with less information in an RDD or IND incident if they are to be effective.

(4) Phases of Response

Typically, the response to an emergency can be divided into three time phases. Although these phases cannot be represented by precise time periods and may overlap, they provide a useful framework for the considerations involved in emergency response planning. The early phase (or emergency phase) is the period at the beginning of the incident when the source (e.g., fire or contaminated plume) at the incident is active, field measurement data are limited or not available, and immediate protective action decisions are required. Exposure to the radioactive plume, short-term exposure to deposited materials and inhalation of radioactive material are generally included when considering protective actions for the early phase of a radiological emergency. The response during the early phase includes the initial emergency response actions to retrieve and care for victims, stabilize the scene, and public health protective actions (such as sheltering-in-place or evacuation) in the short term. Life-saving and first aid actions should be given priority.

In general, early phase protective actions need to be made very quickly, and the protective action decisions can be modified later as more information becomes available. If an explosive RDD is deployed without warning, there may be no time to take protective actions to reduce plume exposure. In the event of a covert dispersal, discovery or detection may not occur for days or weeks, allowing contamination to be dispersed broadly by foot, vehicular traffic, wind, rain or other forces. If an IND explodes, there would only be time to make early phase protective action recommendations to protect against exposure from fallout in areas miles downwind from the explosion.

The intermediate phase of the response may follow the early phase response within as little as a few hours, up to several days. The intermediate phase of the response is usually assumed to begin after the incident source and releases have been brought under control and protective action decisions can be made based on some field measurements of exposure and radioactive materials. Activities in this phase typically overlap with early and late phase activities, and may continue for weeks to many months until protective actions are terminated. During the intermediate phase, decisions must be made on the initial actions needed to begin recovery from the incident, reopen transportation systems and critical infrastructure, and return to some state of normal activities.

The late phase is the period when recovery and cleanup actions designed to reduce radiation levels in the environment to acceptable levels commence and ends when all the recovery actions have been completed. In the late phase, decision makers will have more time and information to allow for better data collection and options analyses. In this respect, the late phase is no longer a response to an "emergency situation," as in the early and intermediate phases, and is better viewed in terms of the long-term objectives of cleanup and restoration of the site to meet the needs and desires of the community and region. With the additional time and increased understanding of the situation, there will be opportunities to involve key stakeholders in providing sound, cost-effective recommendations.

(5) Protective Action Guides

A PAG is the projected dose to a reference individual from an accidental or deliberate release of radioactive material at which a specific protective action to reduce or avoid that dose is recommended. Thus, protective actions, such as evacuation or sheltering-in-place, should normally be taken before the anticipated dose is realized. The PAG Manual, published by EPA in coordination with the FRPCC, provides the basis for this proposed guidance and may be referred to for additional details. The EPA PAGs achieve the following criteria and goals: (1) Prevent acute effects, (2) reduce risk of chronic effects and, (3) require optimization to balance protection with other important factors and ensure that actions taken cause more benefit than harm.

The PAG Manual was written to address the kinds of nuclear or radiological incidents deemed likely to occur. While intended to be applicable to any radiological release, the PAGs were designed principally to meet the needs of commercial nuclear power plant accidents, the worst type of incident under consideration in the PAGs. This is important for two reasons: commercial nuclear power plant accidents are almost always signaled by preceding events, giving plant managers time (hours or days) to make decisions, and local emergency managers time to communicate with the public and initiate evacuations if necessary; and, the suite of radionuclides is well-known, and is dominated by relatively short-lived isotopes. As a result of September 11, the Federal Government has reevaluated the PAGs for their applicability to RDD and IND incidents.

The PAGs are non-regulatory, and are meant to provide a flexible basis for decisions under varying emergency circumstances. Many factors should be considered when deciding whether or not to order an action based on the projected dose to a population. For example, evacuation of a population is much more difficult and costly as the size of the subject population increases. Further, there is a statistical increase in casualties directly related to the size of the population evacuated that must be taken into consideration. Thus, considering incident-specific factors like these, actual projected doses at which action is recommended may vary up or down.

(b) Developing the Proposed Guidance

(1) Use of Existing PAGs

In deriving the recommendations contained in this guidance, new types of incidents and scenarios that could lead to environmental radiological contamination were considered. The working group determined that the existing PAGs for the early and intermediate phases, including worker protection guides, published in the EPA PAG Manual, are also appropriate for use in RDD and IND incidents. The proposed recommendations are provided in Table 1 in Section D.3 of the following guidance. Appendix 1 of the following guidance provides additional details regarding worker protection recommendations and includes additional Response Worker Guidelines in Table 1B.

(2) Guidance for Late Phase Site Cleanup and Restoration

The working group evaluated existing Federal dose and risk-based standards, guidance and benchmarks for site cleanup and restoration as possible guidance for use after an RDD or IND. Standards considered included those of the EPA under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and DOE and NRC standards under the Atomic Energy Act of 1954, as amended. In addition, cleanup guidance and benchmarks issued by national and international radiation advisory bodies (such as the International Commission on Radiological Protection and the International Atomic Energy Agency) were considered.

The working group also examined variations of these standards, guidance and benchmarks by explicitly considering the possibility of achieving more or less stringent risk or dose levels, and by using target ranges.

The working group determined that the nature of potential impacts from radiological and nuclear terror incidents was extremely broad. Because of the broad range of potential impacts that may occur from RDDs and INDs ranging, for example, from light contamination of a street or building, to widespread destruction of a major metropolitan area, a pre-established numeric guideline was not recommended as best serving the needs of decision makers in the late phase. Rather, a site-specific process is recommended for determining the societal objectives for expected land uses and the options and approaches available to address RDD or IND contamination. For example, if the incident is an RDD of limited size, such that the impacted area is small, then it might reasonably be expected that a complete return to normal conditions can be achieved within a short period of time. However, if the impacted area is very large, then achieving even very low criteria for remediation of the entire area and/or maintaining existing land uses may not be practicable.

The process recommended in the guidance was based on the risk management framework discussed in Appendix 2. This process may be implemented through engaging knowledgeable technical experts and key stakeholders to provide decision makers with advice on the options, costs and implications of various courses of action. The guidance recommends that the level of effort and resources invested be scaled to the significance of the incident, scope of contamination, potential severity of economic impact, technical feasibility, and resource constraints. This process should result in the selection of the most appropriate solution that is sensitive to the range of involved stakeholders. Such a process where multiple factors are considered in developing options and deciding on action is often referred to as optimization.

Optimization is a concept that is common to many State, Federal and international risk management programs that address radionuclides and chemicals, although it is not always referred to as such. Broadly speaking, optimization is a flexible, multi-attribute decision process that seeks to consider and balance many factors. Optimization analyses are quantitative and qualitative assessments applied at each stage of site restoration decisionmaking, from evaluation of remedial options, to implementation of the chosen alternative. The evaluation of cleanup alternatives, for example, should factor all relevant variables, including; areas impacted (e.g., size, location relative to population), types of contamination (chemical, biological, and radioactive), human health, public welfare, technical feasibility, costs and available resources to implement and maintain remedial options, long-term effectiveness, timeliness, public acceptability, and economic effects (e.g., on residents, tourism, business, and industry).

The optimization process is an approach that may accommodate a variety of dose and/or risk benchmarks identified from State, Federal or other sources (e.g., national and international advisory organizations) as goals or starting points in the analysis of remediation options. These benchmarks may be useful for analysis of remediation options and levels may move up or down depending on the site-specific circumstances and balancing of other relevant factors.

(3) Implementation of Site Cleanup and Restoration

The guidance presents an implementation plan for long-term site cleanup and restoration analysis and decisionmaking that is described in detail in Appendix 3 of the guidance. The implementation plan was designed principally to describe Federal interactions with State and local governments and public stakeholder representatives. For purposes of this guidance, it is assumed that the RDD or IND incident is significant in size and scope of contamination and that the Federal Government will be the primary source of funding for site cleanup and restoration. This plan is compatible with NIMS and the NRP, and should be seen as a framework for assessing a site, evaluating technologies and remediation options, assessing costs and timeframes, and incorporating local input on current and future land uses so that site cleanup and restoration may be approached in a fair and open manner.

The plan describes a collaborative and iterative approach in which two work groups, one of stakeholders and one of technical subject matter experts, interact to develop cleanup options for the site under the supervision and oversight of a team of senior local, State and Federal management officials. The stakeholder workgroup would represent local interests, and relate local land use preferences and public health and welfare concerns. The technical work group would perform analyses, evaluate technologies and options, assess cost-effectiveness, and estimate timelines for completion. Ongoing discussions between the groups should result in a remediation solution and cleanup criteria for site restoration that are generally acceptable to involved stakeholders. The options and recommended decision would be forwarded up to decisionmakers for final approval so that cleanup can commence.

The constitution of the groups and the interactions among them may be shaped to meet specific local needs and concerns. For example, larger, more complex incidents may require a number of technical experts with specific skills and knowledge, and the location may warrant varying stakeholder group composition. The implementation plan is scalable to the situation.

The goal of the whole process is to reach an agreed upon approach to site cleanup and restoration within a reasonable timeframe that is effective, achievable, and meets the needs of local stakeholders. The final decision must be approved by local, State and Federal decision makers.

(c) Tools and Guidelines To Support Application of the PAGs

The need for protective action will be based on a determination of whether PAGs will be exceeded. To facilitate first responder activities and the use of PAGs in the field, operational guidelines are needed which can be readily used by local decision makers and by responders. Radiation doses are not directly measurable and must be calculated based on measurable quantities such as exposure rates, radiation count rates or decays per unit surface area, or radioactivity per unit volume. Operational guidelines are levels of radioactivity or concentrations of radionuclides that can be accurately measured by radiation detection and monitoring equipment and related or compared to the dose-based PAGs to quickly determine if protective actions need to be implemented. Appendix 4 of the guidance provides examples of existing operational guidelines, and those being developed.

Federal Government agencies are continuing development of the operational guidelines to support the application of the protective action guides in this document, as well as tools that will help in the development of incident-specific operational guidelines when they are needed. As the Federal agencies develop these guidelines and tools, they will be made available for review on the internet at the DOE's Web site at *http://www.ogcms.energy.gov.* This webpage will provide the status of operation guideline development and contain or provide a link to downloadable documents and tools related to the guidelines.

(d) Specific Questions for Reviewers

The Preparedness Directorate/DHS welcomes any comments and suggestions regarding the subject document. However, we would appreciate if reviewers specifically address the following issues:

- Is the presentation and format of the document useful and appropriate for its intended purpose? If not, why not and how should it be changed?
- Is the implementation process in Appendix 3 of the proposed guidance clear and appropriate for its intended purpose? Are roles and responsibilities sufficiently defined in the document?
- Does the guidance provide the appropriate balance between (a) public health and environmental protection goals; and (b) the flexibility needed for the decision makers to conduct emergency response actions and address public welfare needs, costs and benefits, technical feasibility and societal interests during response to and recovery from an incident? If not, how should the guidance be changed to provide the appropriate balance?
- Are the proposed PAGs for the early and intermediate phases implementable? Are they appropriate? If not, why not and what alternatives do you recommend?
- Is the discussion on worker protection and response worker protection helpful? Does Appendix 1 of the proposed guidance provide an adequate discussion of expectations and the use of the alternate response worker guidelines for life and property saving situations? If not, what additional information is needed to make the discussion adequate?
- Are the operational guidelines being developed and discussed in Appendix 4 of the proposed guidance useful? Are the groupings clear and appropriate? Are there additional operational guides that should be developed?
- Is the optimization process proposed for late phase site restoration and cleanup reasonable and sufficiently flexible to address RDD and IND situations? If not, what changes need to be made to improve the process?
- Is a flexible process without pre-established limits an appropriate method for site recovery? Would a flexible process with goals, ranges or limits be more appropriate?
- What other guidance or tools are needed to assist in the implementation of the recommendations?

(e) References

"National Response Plan" (NRP), January 2005.

"National Incident Management Plan" (NIMS), March 1, 2004

"Manual of Protective Action Guides and Protective Actions for Nuclear Incidents" (EPA PAG) EPA 400–R–92–001, May 1992.

Complete Text of the Guidance

Application of Protective Action Guides for Radiological Dispersal Device (RDD) and Improvised Nuclear Device (IND) Incidents

Prepared by the Department of Homeland Security in coordination with the Department of Commerce, Department of Defense, Department of Energy, Department of Labor, Department of Health and Human Services, Environmental Protection Agency, Nuclear Regulatory Commission.

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Preface

Homeland Security Presidential Directive 5 (HSPD–5), Management of Domestic Incidents, states, "to prevent, prepare for, respond to and recover from terrorist attacks, major disasters, and other emergencies, the United States Government shall establish a single, comprehensive approach to domestic incident management." It also assigns the Secretary of the Department of Homeland Security (DHS) the role of Principal Federal Official for domestic incident management.

DHS coordinated the development of this document in order to address the critical issues of protective actions and protective action guides (PAGs) to mitigate the effects caused by terrorist use of a Radiological Dispersal Device (RDD) or Improvised Nuclear Device (IND). This document was developed to provide guidance for site cleanup and recovery following an RDD or IND incident and affirms the applicability of existing PAGs for radiological emergencies. The intended audience of this document is Federal radiological emergency response and consequence management officials. In addition, State and local governments may find this document useful in response and consequence management planning. These guides are not intended for use at site cleanups occurring under other statutory authorities such as the Environmental Protection Agency (EPA) Superfund program, the Nuclear Regulatory Commission's decommissioning program, or other Federal and State cleanup programs. In addition, the scope of this document does not include situations involving United States nuclear weapons accidents.

Underlying the development and implementation of the recommendations in the report is a risk management framework for making decisions to provide for public safety and welfare. Appendix 2 provides a summary of the framework based upon the report, "Framework for Environmental Health Risk Management," published in 1997 by the Commission on Risk Assessment and Risk Management. The stages in this framework—(1) Defining the problem and putting it into context, (2) analyzing the risks, (3) examining the options, (4) making decisions about which options to implement, (5) taking action, and (6) conducting an evaluation of the results—are applicable to each of the stages of response to an RDD or IND incident. However, the recommended guidelines for early and intermediate phase actions already incorporate consideration of the first four stages, so that action can be taken immediately to respond to the incident. All of the stages of the risk management framework will be applicable in the process of establishing the criteria for the late phase of the response, as described later in this report, because each situation will have its own unique problems, risks, options, and decisions.

The Consequence Management, Site Restoration/Cleanup and Decontamination (CMS) Subgroup of the DHS RDD/IND Working Group accomplished this effort. The CMS Subgroup consists of subject matter experts in radiological/nuclear

emergency preparedness and response. In addition to DHS, the following departments and agencies contributed to this effort: Department of Commerce (DOC), Department of Defense (DoD), Department of Energy (DOE), Department of Labor (DOL), Department of Health and Human Services (HHS), Environmental Protection Agency (EPA), and Nuclear Regulatory Commission (NRC).

(a) Introduction

For the early and intermediate phases of response, this document presents levels of radiation exposure at which the Federal Government recommends that actions be considered to avoid or reduce adverse public health consequences from an RDD or IND incident. These PAGs incorporate guidance and regulations published by the EPA, Food and Drug Administration (FDA), and the Occupational Safety and Health Administration (OSHA). For the late phase of the response, this document presents a process to establish appropriate levels based on site-specific circumstances. This document addresses the key questions at each stage of an incident (early, intermediate, and late) and constitutes advice by DHS to Federal, State, and local decision makers.

The objectives of the guides are to aid decision makers in protecting the public, first responders, and other workers from the effects of radiation, while balancing the adverse social and economic impacts following an RDD or IND incident. Restoring the normal operation of critical infrastructure, services, industries, business, and public activities as soon as possible can minimize adverse social and economic impacts.

These guides for RDD and IND incidents are not absolute standards. The guides are not intended to define "safe" or "unsafe" levels of exposure or contamination, but rather they represent the approximate levels at which the associated protective actions are justified. The guides give State and local decision makers the flexibility to be more or less restrictive as deemed appropriate based on the unique characteristics of the incident and local considerations.

The PAGs can be used to select actions to prepare for, respond to, and recover from the adverse effects that may exist during any phase of a terrorist incident—the early (emergency) phase, the intermediate phase, or the late phase. There may be an urgent need to evacuate people; there may also be an urgent need to restore the services of critical infrastructure (e.g., roads, rail lines, airports, electric power, water, sewage, medical facilities, and businesses) in the hours and days following the incident—thus, some response decisions must be made quickly. If the decisions on the recovery of critical infrastructure are not made quickly, the disruption and harm caused by the incident could be inadvertently and unnecessarily increased. Failure to restore important services rapidly could result in additional adverse public health and welfare impacts that could be more significant than the direct radiological impacts.

(b) Characteristics of RDD and IND Incidents

A radiological incident is defined as an event or series of events, deliberate or accidental, leading to the release, or potential release, into the environment of radioactive material in sufficient quantity to warrant consideration of protective actions. Use of an RDD or IND is an act of terror that produces a radiological incident.

(1) Radiological Dispersal Device

An RDD poses a threat to public health and safety through the spread of radioactive materials by some means of dispersion. The mode of dispersal typically conceived as an RDD is an explosive device coupled with radioactive material. The explosion adds an immediate threat to human life and property. Other means of dispersal, both passive and active, may be employed.

There is a wide range of possible consequences that may result from an RDD, depending on the type and size of the device, and how dispersal is achieved. The consequences of an RDD may range from a small, localized area, such as a single building or city block, to large areas, conceivably many square miles. However, most experts agree that the likelihood of impacting a large area is low. In most plausible scenarios, the radioactive material would not cause acutely harmful radiation doses, and the primary public health concern from those materials would be chronic risk of cancer to exposed individuals. Hazards from fire, smoke, shock (physical, electrical or thermal), shrapnel (from an explosion), industrial chemicals, and other chemical or biological agents may also be present.

(2) Improvised Nuclear Device

An IND is a nuclear weapon originating from an adversary State or fabricated by a terrorist group from illicit special nuclear material that produces a nuclear explosion. The nuclear yield achieved by an IND produces extreme heat, powerful shockwaves, and prompt radiation that would be acutely lethal for a significant distance. It also produces radioactive fallout, which may spread far downwind and deposit over very large areas. If nuclear yield is not achieved, the result would likely resemble an RDD in which fissile weapons material was utilized.

(3) Differences Between Acts of Terror and Accidents

Most radiological emergency planning has been conducted to respond to potential nuclear power plant accidents. RDD and IND incidents may differ from a nuclear power plant accident in several ways, and response planning should take these differences into account. First, the severity of an IND incident would be dramatically greater than any nuclear power plant accident (although an RDD would likely be on the same order of magnitude as a nuclear power plant accident). An IND would have vastly greater radiation levels and would create a large radius of severe damage from blast and heat, which could not occur in a nuclear power plant accident.

Second, the release from an RDD or IND may start without any advance warning and would likely have a relatively short release duration. With a major nuclear power plant accident there is likely to be several hours of warning before the release starts, and the release is likely to be drawn out over many hours. This difference means that most early, and some intermediate phase, protective action decisions must be made more quickly (and with less information) in an RDD or IND incident if they are to be effective.

Third, an RDD or IND incident is more likely to occur in a major city with a large population. Because of the rural setting in which many nuclear facilities are located, the number of people affected by a nuclear power plant incident may be less and the amount of critical infrastructure impacted is also likely to be smaller.

Fourth, large nuclear facilities have detailed emergency plans that are periodically exercised, including specified protective action sectors, evacuation routes, and methods to quickly warn the public on the protective actions to take. This would not be the case in an RDD or IND incident. This level of radiological emergency planning typically does not exist for most cities and towns without nuclear facilities.

Fifth, the type of radioactive material involved could and probably will be different from what is potentially

released for a nuclear power plant incident.

(c) Phases of Response

Typically, the response to an RDD or IND incident can be divided into three time phases—the early phase, the intermediate phase, and the late phase—that are generally accepted as being common to all nuclear incidents. Although these phases cannot be represented by precise time periods and may overlap, they provide a useful framework for the considerations involved in emergency response planning.

(1) Early Phase

The early phase (or emergency phase) is the period at the beginning of the incident when immediate decisions for effective use of protective actions are required and actual field measurement data is generally not available. Exposure to the radioactive plume, short-term exposure to deposited materials, and inhalation of radioactive material are generally included when considering protective actions for the early phase. The response during the early phase includes initial emergency response actions to protect public health and welfare in the short term. Priority should be given to lifesaving and first-aid actions.

In general, early phase protective actions should be taken very quickly, and the protective action decisions can be modified later as more information becomes available. If an explosive RDD is deployed without warning, there may be no time to take protective actions to reduce plume exposure. In the event of a covert dispersal, discovery or detection may not occur for days or weeks, allowing contamination to be dispersed broadly by foot, vehicular traffic, wind, rain, or other forces. If an IND explodes, there would only be time to make early phase, protective action recommendations to protect against exposure from fallout in areas many miles downwind from the explosion.

(2) Intermediate Phase

The intermediate phase of the response may follow the early phase response within as little as a few hours. The intermediate phase of the response is usually assumed to begin after the source and releases have been brought under control and protective action decisions can be made based on measurements of exposure and radioactive materials that have been deposited as a result of the incident. Activities in this phase typically overlap with early and late phase activities, and may continue for weeks to many months, until protective actions are terminated.

During the intermediate phase, decisions must be made on the initial actions needed to recover from the incident, reopen critical infrastructures, and return to a general state of normal activity. In general, intermediate phase decisions should consider late phase response objectives. However, some intermediate phase decisions will need to be made quickly (i.e., within hours) and should not be delayed by discussions on what the more desirable permanent decisions will be. All of these decisions must take into account the health, welfare, economic, and other factors that must be balanced by local officials. For example, it can be expected that hospitals and their access roads will need to remain open or be reopened quickly. These interim decisions can often be made with the acknowledgement that further work may be needed as time progresses.

(3) Late Phase

The late phase is the period when recovery and cleanup actions designed to reduce radiation levels in the environment to acceptable levels are commenced, and it ends when all the recovery actions have been completed. With the additional time and increased understanding of the situation, there will be opportunities to involve key stakeholders in providing sound, cost-effective recommendations. Generally, early (or emergency) phase decisions will be made directly by elected public officials, or their designees, with limited stakeholder involvement due to the need to act within a short timeframe. Long-term decisions should be made with stakeholder involvement, and can also include incident-specific technical working groups to provide expert advice to decision makers on impacts, costs, and alternatives.

The relationship between typical protective actions and the phases of the incident response are outlined in Figure 1. Plainly, there is overlap between the phases, and this framework should be used to support a timely decisionmaking process, irrespective of the perception of which incident phase might be applicable.

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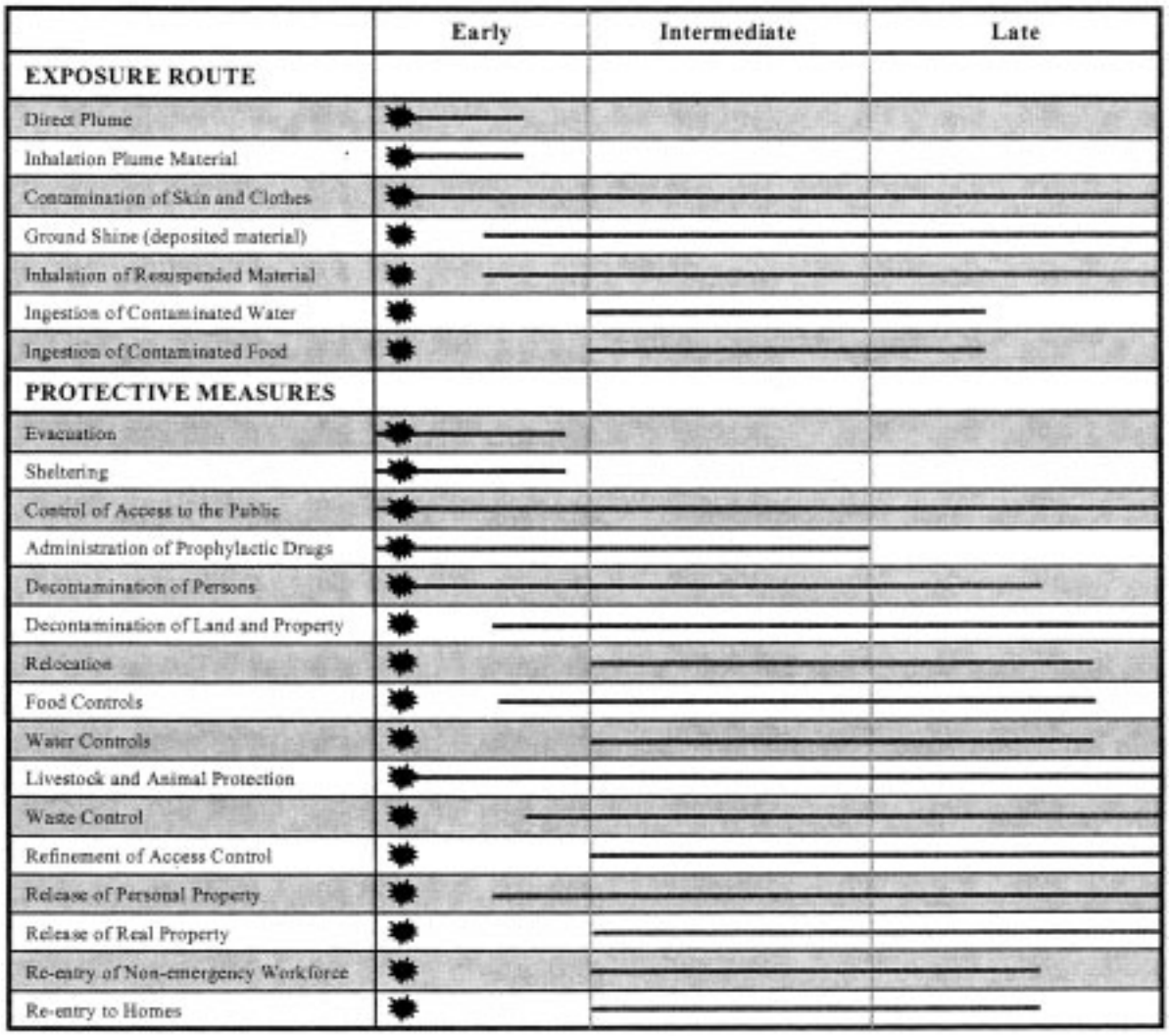
Figure 1. Relationship between Exposure Routes, Protective Measures, & Timeframes for Effects[1]



[1] For some activities, the figure indicates that protective actions may be taken before a release occurs. This would be the case if authorities have forewarning about a potential RDD/IND incident.

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(d) Protective Actions and Protective Action Guides for RDD and IND Incidents

(1) Protective Actions

Protective actions are activities that may be conducted in response to an RDD or IND incident in order to reduce or eliminate exposure to members of the public to radiation or other hazards. These actions are generic and are applicable to RDDs and INDs. The principal protective action decisions for consideration in the early and intermediate phases of an emergency are whether to shelter-in-place, evacuate, or relocate affected or potentially affected populations. Secondary actions include administration of prophylactic drugs, decontamination, use of access restrictions, and use of restrictions on food and water. In some situations, only one protective action needs to be implemented, while in others, numerous protective actions should be implemented.

(2) Protective Action Guides

PAGs are the projected dose to a reference individual, from an accidental or deliberate release of radioactive material at which a specific protective action to reduce or avoid that dose is recommended. Thus, protective actions are designed to be taken before the anticipated dose is realized. The "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents" [1] published by the EPA (also known as the EPA PAG Manual) provides a significant part of the basis

[1] "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents," U.S. Environmental Protection Agency, May 1992, EPA–400–R–92–001.

of this document and may be referred to for additional details.

The existing PAGs meet the following principle criteria and goals: (1) Prevent acute effects, (2) reduce risk of chronic effects, and (3) require optimization to balance protection with other important factors and ensure that actions taken cause more benefit than harm.

In this document, PAGs are generic criteria based on balancing public health and welfare with the risk of alternatives applied in each of the phases of an RDD or IND incident. The PAGs are specific for radiation and radioactive materials, and must be considered in the context of other chemical or biological hazards that may also be present. Though the PAGs are values of dose avoided, published dose conversion factors and derived response levels may be utilized in estimating doses, and for choosing and implementing protective actions. Other quantitative measures and derived concentration values may be useful in emergency situations; for example, for the release of goods and property from contaminated zones, and to control access in and out of contaminated areas.

Because of the short time frames required for emergency response decisions, it is likely there will not be opportunities for local decision makers to consult with a variety of stakeholders before taking actions. Therefore, the early and intermediate phase EPA PAGs have been based on the significant body of work done in the general context of radiological emergency response planning, and represent the results of public comment, drills, exercises, and a consensus at the Federal level for appropriate emergency action.

In order to use the PAGs to make decisions about appropriate protective actions, decision makers will need information on suspected radionuclides; projected plume movement and depositions; and/or actual measurement data or, during the period initially following the release, expert advice in the absence of good information. Sources of such information include: on-scene responders as well as monitoring, assessment, and modeling centers.

(3) Protective Action Guides for RDD and IND Incidents

The PAGs for RDD and IND incidents are generally based on the following sources: the PAGs developed by EPA in coordination with other Federal agencies through the Protective Action Guide Subcommittee of the Federal Radiological Preparedness Coordinating Committee; guidance developed by the FDA for food and food products and the distribution of potassium iodide; and OSHA regulations.

In order to use this guide, there may be a need to compare the PAG to the results of a risk assessment or dose projection. It should be emphasized that, in general, when making radiation dose projections, realistic assumptions should be used so the final results are representative of actual conditions.

Table 1 provides a summary of the key actions and suggested PAGs for an RDD or IND incident.

TABLE 1.—PROTECTIVE ACTION GUIDES FOR RDD OR IND INCIDENTS

Phase	Protective action	Protective action guide	Reference
Early	Limit Emergency Worker Exposure.	5 rem (or greater under exceptional circumstances[1].	EPA PAG Manual.
	Sheltering of Public	1 to 5 rems projected dose[2]	EPA PAG Manual.
	Evacuation of Public	1 to 5 rems projected dose[3]	EPA PAG Manual.
	Administration of Prophylactic Drugs.	For potassium iodide, FDA Guidance dose values[4 5].	FDA Guidance[6].
Intermediate	Limit Worker Exposure	5 rem/yr	See Appendix 1.
	Relocation of General Public	2 rems, projected dose first year Subsequent years: 500 mrem/yr projected dose.	EPA PAG Manual.
	Food Interdiction	500 mrem/yr projected dose	FDA Guidance[7].
	Drinking Water Interdiction	500 mrem/yr dose	EPA guidance in development.
Late	Final Cleanup Actions	Late phase PAG based on optimization.	

[1] In cases when radiation control options are not available or, due to the magnitude of the incident, are not sufficient, doses above 5 rems may be unavoidable. For further discussion see Appendix 1.
[2] Should normally begin at 1 rem; however, sheltering may begin at lower levels if advantageous.
[3] Should normally begin at 1 rem.
[4] Provides protection from radioactive iodine only.
[5] For other information on medical prophylactics and treatment please refer to *http://www.fda.gov/cder/drugprepare/default.htm* or *http://www.bt.cdc.gov/radiation/index/asp* or *http://www.orau.gov/reacts*.
[6] "Potassium Iodide as a Thyroid Blocking Agent in Radiation Emergencies," December 2001, Center Drug Evaluation and Research, FDA, HHS (*http://www.fda.gov/cder/guidance/5386fnl.htm*).
[7] "Accidental Radioactive Contamination of Human Food and Animal Feeds: Recommendations for State and Local Agencies," August 13, 1998, Office of Health and Industry Programs, Center for Devices and Radiological Health, FDA, HHS (*http://www.fda.gov/cdhr/dmqrp/84.html*).

(i) Early Phase PAGs

For the early phase, the existing PAGs for evacuation, sheltering, relocation, and protection of emergency workers are appropriate for RDD and IND incidents. FDA guidance on the administration of stable iodine is also considered appropriate (only useful for an IND or NPP incident involving radioiodine release). The administration of other prophylactic drugs should be evaluated on a case-by-case basis and depend on the nature of the event and radioisotopes involved. It can be expected that an initial zone will be established and controlled around the site of the incident, as is the case for other crime scenes and hazards. These guides allow for the refinement of that area if the presence of radiation or radioactive material warrants such action.

The response during the early phase includes initial emergency response actions to protect public health and welfare in the short term. Priority should be given to lifesaving and first-aid actions. Incident commanders should define and enforce an allowable emergency dose limit in accordance with the immediate risk situation. Following IND detonation, the highest priority missions will include suppression of ignited fires to prevent further loss of life. High radiation doses to emergency personnel in IND situations, substantially exceeding the nominal occupational level of 5 rem may be unavoidable. While every effort to employ as low as reasonably achievable (ALARA) principles after an

IND event will be made, medically significant exposures may also be unavoidable (see Appendix 1, Section E). Medical evaluation of emergency response personnel after such exposure is recommended.

(ii) Intermediate Phase PAGs

The decisions in the intermediate phase will focus on the return of key infrastructure and services, and the rapid restoration of normal activities. This will include decisions on allowing use of roads, ports, waterways, transportation systems (including subways, trains, and airports), hospitals, businesses, and residences. It will also include responses to questions about acceptable use and release of real and personal property such as cars, clothes, or equipment that may have been impacted by the RDD or IND incident. Many of the activities will be concerned with materials and areas that were not affected but for which members of the public may have a concern. Thus, the PAGs serve to guide decisions on returning to impacted areas, leaving impacted areas, and providing assurance that an area or material was not impacted. See Appendix 1 for a discussion of occupational safety and health standards.

For the intermediate phase, relocation of the population is a protective action that can be used to reduce dose. Relocation is the removal or continued exclusion of people (households) from contaminated areas in order to avoid chronic radiation exposure, and it is meant to protect the general public. For the intermediate phase, the existing relocation PAGs of 2 rems in the first year and 500 mrems in any year after the first are considered appropriate for RDD and IND incidents. However, for some IND incidents, the area impacted and the number of people that might be subject to relocation could potentially be very large and could exceed the resources and infrastructure available. For example, in making the relocation decision, the availability of adequate accommodations for relocated people should be considered. Decision makers may need to consider limiting action to those most severely affected, and phasing relocation implementation based on the resources available.

The relocation PAG applies principally to personal residences but may impact other facilities as well. For example, it could impact work locations, hospitals, and park lands as well as the use of highways and other transportation facilities. For each type of facility, the occupancy time of individuals should be taken into account to determine the criteria for using a facility or area. It might be necessary to avoid continuous use of homes in an area because radiation levels are too high. However, a factory or office building in the same area could be used because occupancy times are shorter. Similarly, a highway could be used at higher contamination levels because the exposure time of highway users would be considerably less than the time spent at home.

The intermediate phase PAGs for the interdiction of food and water are set at 500 mrem/yr each for RDD and IND incidents. These values are consistent with those now used or being considered as PAGs for other types of nuclear incidents.

The use of simple dose reduction techniques is recommended for personal property and all potentially contaminated areas that continue to be occupied. This use is also consistent with the PAGs developed for other types of nuclear incidents. Examples of simple dose reduction techniques would be washing of all transportation vehicles (e.g., automobiles, trains, ships, and airplanes), personal clothing before reuse, eating utensils, food preparation surfaces before next use, and other personal property, as practicable and appropriate.

(iii) Late Phase PAGs

The late phase involves the final cleanup of areas and property with radioactive material present. Unlike the early and intermediate phases of an RDD or IND incident, decision makers will have more time and information during the late phase to allow for better data collection, stakeholder involvement, and options analysis. In this respect, the late phase is no longer a response to an "emergency situation," and is better viewed in terms of the objectives of site restoration and cleanup.

Because of the extremely broad range of potential impacts that may occur from RDDs and INDs (e.g., ranging from light contamination of one building to widespread destruction of a major metropolitan area), a pre-established numeric guideline is not recommended as best serving the needs of decision makers in the late phase. Rather, a process should be used to determine the societal objectives for expected land uses and the options and approaches available, in order to select the most acceptable criteria. For example, if the incident is an RDD of limited size, such that the impacted area is small, then it might reasonably be expected that a complete return to normal conditions can be achieved within a short period of time. However, if the impacted area is large, then achieving even low cleanup levels for remediation of the entire area and/or maintaining existing land uses may not be practicable.

The Risk Management Framework described in Appendix 2 provides such a process and helps assure the protection of public health and welfare. Decisions should take health, safety, technical, economic, and public policy factors into account. Appendix 3 utilizes the framework to manage Federal RDD and IND site cleanup and restoration.

Optimization (broadly defined) is a concept that is common to many State, Federal, and international risk management programs that address radionuclides and chemicals, although it is not always identified as such. Optimization is a flexible approach where a variety of dose and/or risk benchmarks may be identified from State, Federal, or other sources (e.g., national and international advisory organizations). These benchmarks may be useful for analysis of remediation options and levels may move up or down depending on the site-specific circumstances and balancing of other relevant factors.

Optimization activities are quantitative and qualitative assessments applied at each stage of site restoration decisionmaking, from evaluation of remedial options, to implementation of the chosen alternative. The evaluation of options for the late phase of recovery after an RDD or IND incident should balance all of the relevant factors, including:

- Areas impacted (e.g., size, location relative to population)
- Types of contamination (chemical, biological, and radiological)
- Other hazards present
- Human health
- Public welfare
- Ecological risks
- Actions already taken during the early and intermediate phases
- Projected land use
- Preservation or destruction of places of historical, national, or regional significance
- Technical feasibility
- Wastes generated and disposal options and costs
- Costs and available resources to implement and maintain remedial options
- Potential adverse impacts (e.g., to human health, the environment, and the economy) of remedial options
- Long-term effectiveness
- Timeliness
- Public acceptability, including local cultural sensitivities
- Economic effects (e.g., tourism, business, and industry)

The optimization process provides the best opportunity for decision makers to gain public confidence through the involvement of stakeholders. This process may begin during, and proceed independently of, intermediate phase protective actions.

The Recovery Management Team (see Appendix 3) should develop a schedule with milestones for conducting the optimization process as soon as practicable following the incident. While the goal of the team should be to complete the initial optimization process within six months of the incident, the schedule must take into consideration incident-specific factors that would affect successful implementation. It should be recognized that this schedule may need to represent a phased approach to cleanup and is subject to change as the cleanup progresses.

(e) Federal Implementation

This guidance describes the approach the Federal Government will take in making protective action recommendations and provides guidance for long-term site restoration following radiological and nuclear terror incidents. Appendix 3 provides additional details on the process that will be used to implement this guidance, focusing on describing the role of the Federal Government and how it will integrate its activities with State and local governments and the public. In particular, Appendix 3 addresses the scenario in which the Federal Government is expected to be the primary funding entity for cleanup and restoration activities. It should be recognized that for some radiological terror incidents, States might take the primary leadership role in cleanup and contribute significant resources toward restoration of the site. The appendix does not address such a scenario.

(f) Operational Guidelines

Implementation of the PAGs is supported by operational guidelines that can be readily used by decision makers and responders in the field. Operational guidelines are levels of radiation or concentrations of radionuclides that can be accurately measured by radiation detection and monitoring equipment, and then related or compared to the PAGs to quickly determine if protective actions need to be implemented. Federal agencies are continuing development of operational guidelines to support the application of protective action recommendations in this document.

Some values already exist that could potentially serve as operational guidelines for RDD and IND recovery operations. However, there are many more operational guidelines that need to be developed or applied in order to provide decision makers and responders with the capability to quickly determine that the suite of PAGs for RDDs and INDs are being met. Appendix 4 presents a summary of the potential types of operational guidelines likely needed for RDD and IND response operations.

Some examples of existing values that could be used as operational guidelines for RDD and IND response operations include:

(i) Derived Response Levels

The PAG Manual published by the EPA contains guidance and Derived Response Levels (DRLs) for use with the early phase PAGs. These values serve as operational guidelines to readily determine if protective actions associated with the PAGs need to be implemented. If concentrations of radionuclides obtained through field measurements are less than the DRLs, the PAGs will not be exceeded and, thus, a protective action may not need to be taken.

(ii) Derived Intervention Levels for Food

The FDA has developed Derived Intervention Levels (DILs) for implementation of the PAGs for food. These DILs establish levels of contamination than can exist on crops and in food products and still maintain exposure levels below the food PAGs, and could therefore be used as operational guidelines for RDD and IND events.

(iii) Radiation Levels for Control of Access to Radiation Areas

Another example of an operational guideline is a 2mR/hr radiation level that can be established for control of access to radiation areas during the response. The rationale for this operational guideline is that first responders need an easily measurable dose rate for restricting access to more highly contaminated areas. The operational guideline would not limit access by emergency workers performing duties such as rescuing victims, but it would allow the establishment of a hot zone boundary for an area to which unnecessary access should be prevented. While emergency workers' total doses would be monitored and decisions made accordingly, the 2mR/hr operational guideline is also useful to control access for non-emergency workers and members of the public who are subject to lower dose constraints. For example, non-emergency workers may need limited access to infrastructure and facilities within the contaminated zone, and residents may need access to homes for limited time periods.

Additional operational guidelines for use with PAGs in each phase of recovery will need to be developed for a wide range of personal and real property. Appropriations language from House Report 108–076, Making Emergency Wartime Supplemental Appropriations for the Fiscal Year 2003, and for Other Purposes, directs the DOE "to develop standards for the cleanup of contamination resulting from a potential RDD event." Accordingly, DOE is leading an effort to develop needed standards, in the form of operational guidelines, for a wide range of personal (e.g., vehicles, equipment, personal items, debris) and real (e.g., buildings, roads, bridges, residential and commercial areas, monuments) property types likely to be impacted by an RDD or IND incident. The work is being coordinated with other Federal agencies, and an inter-agency work group has been established to foster collaboration and acceptance of the operational guidelines upon completion. The goal is to arrive at the needed set of operational guidelines that can then be incorporated into appropriate Federal response documents and used by decision makers and responders.

Appendix 1—Radiation Protection for the Responder and Planning for Implementation of the Protective Action Guides

The purpose of this appendix is to discuss the context for the PAGs and to provide guidance for their application, particularly for the protection of emergency responders. Response organizations need to develop plans and protocols that address radiation protection during an RDD or IND incident and that ensure appropriate training for responders and decision makers. Although this appendix discusses some of the important issues and information that must be communicated, it is not intended to provide a comprehensive discussion of the topic. Other detailed reports on radiation risk, risk management decisionmaking, training, and public communication should be consulted in the development of plans, protocols, and training materials. Organizations that have published such reports include the National Council on Radiation Protection and Measurements, the International Commission on Radiological Protection, the International Atomic Energy Agency, the American Nuclear Society, and the Health Physics Society.

(a) The Protective Action Guides and Operations Guidelines Into Perspective

The recommendations in this report were developed to assist decision makers and responders in planning for radiological

emergencies, in particular, those related to terrorist incidents using RDDs and INDs. Decisions regarding protective actions for workers and the public during such incidents are risk management decisions, and the recommendations in this report are provided in that context. In all cases, all practical and reasonable means should be used to reduce or eliminate exposures that are not necessary to protect public health and welfare.

(b) The Difference Between PAGs for Emergencies and Other Operations

Worker and public protection guidance and standards for normal operations are typically developed through risk management approaches and are documented in Federal and State regulations (e.g., 10 CFR part 20; 10 CFR part 835; 29 CFR 1910.1096). However, many factors or decision criteria differ during a radiological emergency versus normal operations. Some of the key decision criteria differences between emergency PAGs and typical occupational and public protection standards are shown in Table 1A.

Although there are times when implementation of standards or guidelines can cause or enhance other risks, these secondary risks normally can be controlled. Standards for normal operations provide a margin of safety that is greater than that in guidelines for emergency response because that margin can be provided in a manner that ensures no significant increase in public health risk or detriment to the public welfare. Currently, the development of standards and guidelines for normal operations is done in a manner that provides reasonable assurance that implementation of the standards will not cause more risk than it averts.

TABLE 1A.—DIFFERENT RISK MANAGEMENT CONSIDERATIONS FOR EMERGENCY AND NORMAL OPERATIONS

Emergency	Normal operations
An adversary may attempt to create conditions that will cause high radiation exposures, widespread contamination, and mass disruption.	Key elements to radiation protection are to contain radioactivity and confine access to it.
Actions must be taken as soon as possible to minimize exposures even when information on the risks is incomplete.	There is adequate time to fully characterize situations and determine risks and mitigating measures.
Lack of action—due to unclear, overly complicated, or reactive guidelines—have a high possibility of causing unintended consequences.	Inaction or delays may increase costs but rarely results in consequences that cannot be mitigated.
During emergencies, the undesired consequences can be significant, uncontrollable, and unpredictable.	Consequences associated with implementation of the standard are well characterized, considered, and controlled so as not to be of concern from either a health or public welfare perspective.

During the early phase of an emergency response, however, tradeoffs are not only cost-related but may directly impact public health and welfare. It is difficult to ensure that implementation of recommendations does not result in more harm than good.

Guidelines that prevent or restrict a responder's ability to provide medical assistance based on an uncertain cancer risk may result in loss of life of incident victims. If the PAGs delay firefighters' ability to control fires, resulting property damage can seriously affect overall public welfare or even cause an increase to health risks associated with the incident. The decision maker's use of public protection PAGs also must consider secondary risks. Evacuation of the public could result in loss of life and injury as a result of the evacuation process that exceeds the increased public risk should the evacuations not occur. These and other considerations require that the PAGs and associated operational guides be developed so that decisions can appropriately consider risks, detriments, and costs associated with an RDD or IND incident, as well as those associated with implementation of the protective action to, on balance, benefit the public welfare.

Emergency response actions should be carried out following a careful consideration of both the benefits to be achieved by the "rescue" or response action (e.g., the significance of the outcome to individuals, populations, property, and the environment at risk considering their likely impaired status following an incident), and the potential for additional health impacts to those conducting the emergency response operation. That is, in making an emergency response decision, the potential for the success of the response/rescue operation and the significance of its benefits to the community should be balanced against the potential for rescuers to be exposed to new and significant health and safety risks.

Actions should be based on balancing risks and benefits. Nothing in this guidance should be construed to imply that appropriate steps should not be taken to minimize dose to workers and the public, consistent with the ALARA principle applied to radiation protection activities in the United States. However, actions similarly should not restrict lifesaving or property-saving actions necessary for protection of public and public welfare.

(c) Controlling Occupational Exposures and Doses to First Responders

This section provides guidance for first responders concerning occupational doses of radiation, during an emergency response. In many emergency situations, actual exposure of workers, including first responders, may be controlled to low doses when proper precautions are taken. However, it is important to recognize that conditions that exist during an RDD or IND incident may limit the effectiveness of these precautions for some first responders. One of the major radiation protection controls used for normal operations is containment of the radioactive material. Another is to keep people away from the sources. However, during an RDD or IND incident, use of these controls may not be possible. As a result, radiation exposures, particularly to first responders, may be unavoidable and may have the potential to exceed limits used for normal operations. Nonetheless, every reasonable effort should be made to control doses to levels that are as low as practicable.

(d) Maintaining the "As Low As Reasonably Achievable" Principle

To minimize the risks from exposure to ionizing radiation, employers of first responders should prepare emergency response plans and protocols in advance to keep worker exposures as low as reasonably achievable. These protocols should include, to the extent they can be employed, the following health physics and industrial hygiene practices:

- Minimizing the time spent in the contaminated area (e.g., rotation of workers);
- Maintaining the maximum distance from sources of radiation;
- Shielding of the radiation source from the receptor;
- Tailoring of hazard controls to the work performed;
- Properly selecting and using respirators and other personal protective equipment (PPE) may be useful to prevent exposure to internally deposited radioactive materials (e.g., alpha and beta emitters); and
- Using prophylactic medications, where medically appropriate, that either block the uptake or reduce the retention time of radioactive material in the body.

The incident commander should be prepared to identify, to the extent possible, all hazardous conditions or substances and to perform appropriate site hazard analysis. Emergency management plans should include protocols to control worker exposures, establish exposure guidelines in advance, and outline procedures for worker protection. All activities should be performed in conjunction with emergency procedures that include provisions for exposure monitoring, worker training on the hazards involved in response operations and ways to control them, and medical monitoring.

(e) Understanding Dose and Risk Relationships

Responders and incident commanders should understand the risks associated with radiation. PAG recommendations in this document provide a guideline level of 5 rems for worker protection and alternative

response worker guidelines [2] (see Table 1B) for certain activities where exposures below 5 rems cannot be maintained.

TABLE 1B.—RESPONSE WORKER GUIDELINES

Total effective date equivalent (TEDE) guideline	Activity	Condition
5 rems	All occupational exposures	All reasonably achievable actions have been taken to minimize dose.
10 rems*	Protecting valuable property necessary for public welfare (e.g., a power plant).	Exceeding 5 rems unavoidable and all appropriate actions taken to reduce dose. Monitoring available to project or measure dose.
25 rems**	Lifesaving or protection of large populations	Exceeding 5 rems unavoidable and all appropriate actions taken to reduce dose. Monitoring available to project or measure dose.

*For potential does >10 rems, special medical monitoring programs should be employed, and exposure should be tracked in terms of the unit of absorbed dose (rad) rather than TEDE (rem).

**In the case of a very large incident such as an IND, incident commanders may need to consider raising the property and lifesaving response worker guidelines in order to prevent further loss of life and massive spread of destruction.

It is likely during most RDD incidents that the radiation control measures discussed above will be able to maintain doses below the 5 rem occupational exposure PAG in almost all situations, including fire fighting; general emergency response; and transport to, and medical treatment of, contaminated victims at hospitals. However, in those situations in which victims are injured or trapped in high radiation areas or only be reached via high radiation areas, exposure control options may be unavailable or insufficient, and doses above 5 rem may be unavoidable.

Response decisions allowing actions that could result in doses in excess of 5 rems can only be made at the time of the incident, under consideration of the actual situation. In such situations, incident commanders and other responders need to understand the risk posed by such exposures in order to make informed decisions. The Response Worker Guidelines for life and property saving activities in Table 1B are provided to assist such decisions.

The catastrophic event represented by an IND can cause other immediate widespread physical hazards such as firestorm and building instability; emergency intervention will be integral to preventing further loss of life and additional destruction. This intervention may result in increased exposure to emergency response personnel. Exceeding the Response Worker Guidelines in Table 1B in such an event may be unavoidable.

Persons undertaking an emergency mission covered under the alternative occupational PAG levels should do so with full awareness of the sub-chronic and chronic risks involved, including knowledge of numerical estimates of the risk of delayed effects, and they should be given reasonable assurance that normal controls cannot be utilized to reduce doses below the general 5 rem occupational exposure PAG. The 25 rem lifesaving Response Worker Guidelines provide assurance that exposures will not result in detrimental deterministic health effects (i.e., prompt or acute effects). If, due to extensive public health and welfare benefits (i.e., optimization considerations), response actions are deemed necessary that cause exposures that may exceed the 25 rem alternative Response Worker Guideline, such response actions should only be taken with an understanding of the potential acute effects of radiation to the exposed responder (Table 1C) and based on the determination that the benefits of the action clearly exceed the associated risks.

[2] Alternative response worker guidelines are applicable only during emergency situations. They typically apply during the early phase of the emergency but may also be applicable in later phases under emergency situations such as a fire or a structure failure that puts life and property at risk. In addition to the obvious life saving situation, other examples of where the guidelines may be applicable include situations where it is necessary to access controls to prevent or mitigate explosions, fires or other catastrophic events. The alternative response worker guidelines are not applicable to normal restoration or cleanup actions.

Table 1C. Acute Radiation Syndrome*

Feature or Illness	Effects of Whole-Body Absorbed Dose, from external radiation or internal absorption, by dose range in rad				
	0-100	100-200	200-600	600-800	>800
Nausea, vomiting	None	5-50%	50-100%	75-100%	90-100%
Time of onset		3-6 h	2-4 h	1-2 h	<1 h to minutes
Duration		<24 h	<24 h	<48 h	<48 h
Lymphocyte count	Unaffected	Minimally decreased	<1000 at 24 h	<500 at 24 h	Decreases within hours
Central Nervous System function	No Impairment	No Impairment	Cognitive impairment for 6-20 h	Cognitive impairment for >20 h	Rapid incapacitation
Mortality	None	Minimal	Low with aggressive therapy	High	Very High; Significant neurological symptoms indicate lethal dose

*Prompt health effects with whole-body absorbed doses received within a few hours.

Source: Medical Management of Radiological Casualties, Second Edition, Armed Forces Radiobiology Research Institute, Bethesda, MD, April 2003.

The following paragraph is presented to help illustrate how certain toxicity information may be relevant in response decisionmaking during emergencies. It is important to note that the approach used below to translate dose to risk in this discussion is a simplistic approach useful in developing rough estimates of risks for comparative purposes given limited data. However, other more realistic approaches are often used in assessing risks for risk management decisions (other than for emergencies) when more complete information about the contaminants and the potential for human exposure is available. These other approaches rely on radionuclide-specific risk factors (e.g., Federal Guidance Report #13 [3] and EPA Health Effects Assessment Summary Tables).

The estimated risk of fatal cancer [4] for workers exposed to 10 rem is 0.6 percent (six cases per thousand exposed). Workers exposed to 25 rem have an estimated risk of fatal cancer of 1.5 percent (15 cases per thousand exposed). Because of the latency period of cancer, younger workers face a larger risk of fatal cancer than older workers (for example, when exposed to 25 rem, twenty to 30 year-olds have a 9.1 per thousand risk of premature death, while 40 to 50 year-olds have a 5.3 per thousand risk of premature death).[5]

(f) Incident Commanders and Responders Need to Proper Training in Advance

When the 5-rem guideline is exceeded, workers should be provided the following:

- Medical follow-up
- Training with respect to the risk associated with exposure to ionizing radiation
- A thorough explanation of the latent risks associated with receiving exposures greater than 5 rems.

In addition, these PAGs represent dose constraint levels (e.g., when this level of dose is accumulated, the responder should not take part in the later stages of the response that may significantly increase their dose). It is assumed that doses acquired in response to a radiological incident would be "once in a lifetime" doses, and that future radiological exposures would be substantially less.

Incident commanders and responders need a thorough understanding of the worker exposure guidelines for radiological emergency response, including the associated risks and specific worker protection procedures. The reader is referred to the EPA PAG Manual and Protective Actions for Nuclear Incidents (May 1992), and the Federal Radiological Monitoring and Assessment Center (FRMAC) Radiological Emergency Response Health and Safety Manual (May 2001).[6]

(g) Occupational Standards

Under the provisions of the Occupational Safety and Health Act, and equivalent statutes in the 26 States that operate OSHA-approved State plans, each employer is responsible for the health and safety of its employees. In accomplishing this, employers are expected to comply with the requirements of the Federal OSHA or State plan occupational safety and health standards applicable in the jurisdiction in which they are working. States with State plans enforce standards, under State law, which are "at least as effective as" Federal OSHA standards, and therefore may have more stringent or supplemental requirements. There are currently 22 States and jurisdictions operating complete State plans (covering both the private sector and State and local government employees, including State and local emergency responders). Four of these State plans cover public (State and local government) employees only. Federal OSHA administers the safety and health program for the private sector in the remaining States and territories, and also retains authority with regard to safety and health conditions for Federal employees throughout the nation, but it does not have enforcement jurisdiction over State and local government employees.

The primary occupational safety and health standard for emergency response is the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard (29 CFR 1910.120). The EPA has a Worker Protection (40 CFR 311) standard that applies the HAZWOPER standard to State and local workers in States that do not have their own occupational safety and health program.

[3] "Risks from Low-Level Environmental Exposure to Radionuclides," Federal Guidance Report #13, U.S. Environmental Protection Agency, January 1998, EPA 402–R–97–014.

[4] Risk per dose of a fatal concern is assumed to be about 6×10^{-4} per rem. Cancer incidence is assumed to be about 7×10^{-4} per rem. (See Federal Guidance Report #13.

[5] Federal Guidance Report #13.

[6] Available at *http://www.nv.doe.gov/programs/frmac/DOCUMENTS.htm.*

For emergency response, the OSHA standard (among many other requirements) states that "the individual in charge of the incident command system shall identify to the extent possible, all hazardous substances or conditions present and shall address as appropriate site analysis, use of engineering controls, maximum exposure limits, hazardous substance handling procedures, and use of any new technologies" (29 CFR 1910.120(q)). As part of emergency preparedness activities, individuals authorized as incident commanders should receive the necessary training and planning prior to the incident, use the hazard information available, consult relevant standards, and apply all feasible and useful measures to minimize hazards to emergency responders.

OSHA's ionizing radiation standard (29 CFR 1910.1096), which may also apply in certain circumstances, limits quarterly dose [7] and includes other requirements such as monitoring, recordkeeping, training, and reporting.

The worker exposure levels are not PAGs but instead are regulatory limits that cannot be exceeded except under certain conditions. These occupational limits allow workers to receive radiation exposure during the course of performing their jobs. This limit offers the possibility that industrial and manufacturing facilities, critical infrastructures and other business operations could be reopened without having to be cleaned up, as long as they are in compliance with the 5 rem dose limit and other OSHA requirements found in 29 CFR 1910.1096. Otherwise, the relocation PAGs could be used by decision makers to protect their citizens.

DOE employees and contractors are subject to DOE radiation protection regulations, and requirements for worker protection from radiation exposure are contained in 10 CFR part 835. These requirements apply to all DOE employees and contractors that may be exposed to ionizing radiation as a result of their work for DOE, including work relating to emergency response activities. Section 835.3(d) indicates that nothing in the regulation "shall be construed as limiting actions that may be necessary to protect health and safety." This clause is intended to recognize the fact that during emergencies, lifesaving or property-saving actions may necessitate actions that have the potential to cause doses in excess of the Department's radiation dose limits. Subpart N of section 835 provides direction for emergency exposure situations and indicates that:

- The risk of injury should be minimized.
- Actual and potential risks should be weighed against benefits of such actions causing exposures.
- No individual should be forced to perform a rescue action that involves substantial personal risk.
- Individuals authorized to perform emergency actions that may result in exposures exceeding DOE dose limits should receive prior training and briefing on known or anticipated hazards.

Under all circumstances, doses should be maintained as low as is reasonably achievable. Under DOE requirements, emergency response doses are not included with worker doses measured and calculated to demonstrate compliance with 10 CFR Part 835 dose limits.

Requirements for the protection of NRC employees are covered by NRC Management Directive 10.131, "Protection of NRC Employees Against Ionizing Radiation." Section VI, Guidance for Emergency Exposure Controls During Rescue and Recovery Activities, deals specifically with radiation exposure control during emergencies. Section VI adopts the dose limits in the EPA PAG Manual (EPA 400–R–92–001) for exposure of NRC employees during emergencies. Similarly, NRC and Agreement State licensees have established on-site exposure guidelines consistent with EPA PAGs.

For an IND incident, the radiological consequences could be so severe that many workers would be exposed in activities, such as emergency lifesaving functions, that would result in doses in excess of the 5 rem limit for normal occupational activities.

Appendix 2—Risk Management Framework for RDD/IND Incident Planning

This appendix contains a description of a risk management framework for making decisions to protect public health and welfare in the context of cleanup and site restoration following an RDD or IND incident. The framework is based on the report, "Framework for Environmental Health Risk Management," mandated by the 1990 Clean Air Act Amendments published by the Commission on Risk Assessment and Risk Management in 1997. This appendix provides specific material for RDD and IND incidents, and reference to the report is encouraged for the details of the general framework. Details of a plan for implementing this framework for certain RDD and IND incidents are provided in Appendix 4.

The "Framework for Environmental Health Risk Management" is considered generally suitable for addressing the long-term recovery issues for RDDs and INDs. Given the time frames following an RDD or IND incident, there is generally not sufficient time in the early and intermediate phases to conduct full risk assessment and get stakeholder involvement. Therefore, in order for the framework to be effective for these phases, it must be used in planning and preparing for a radiological or nuclear incident. As a result, many of the principles have already been incorporated into the establishment of the PAGs for RDD and IND incidents on a generic basis.

The framework is designed to help decision makers make good risk management decisions. The level of effort and resources invested in using the framework should be scaled to the importance of the problem, the potential severity and economic impact of the risk, the level of controversy surrounding the problem, and resource constraints. In the context of an RDD or IND incident, the risk management decisions involve responding to the consequences of a particular incident. The risks that must be considered are both radiation risks and potentially chemical or biological agents. Other factors to be considered include the continued sense of uncertainty and disruption in normal activities; the loss of, or limited access to, critical infrastructure and health care; and general economic disruption.

The framework relies on the three key principles of broad context, stakeholder participation, and iteration. Broad context refers to placing all of the health and environmental issues in the real-world context following an RDD or IND incident, and is intended to assure that all public welfare related factors and impacts are taken into account. Stakeholder participation is critical to making and successfully implementing sound, cost-effective, risk-informed decisions. Iteration is the process of continuing to refine the information available, and therefore the decisions and actions that can be taken at any point in time. Together these principles outline a fair, responsive approach to making the decisions necessary to effectively respond to the impacts of an RDD or IND incident.

Risk management is the process of identifying, evaluating, selecting, and implementing actions to reduce risk to public health and the environment. The goal of risk management is scientifically sound, cost-effective, integrated actions that reduce or prevent risks while taking into account social, cultural, ethical, public policy, and legal considerations. In order to accomplish this goal, information will be needed on the nature and magnitude of the risks present as a result of the incident, the options for reducing or eliminating the risks, and the effectiveness and costs of those options. Decision makers also consider the economic, social, cultural, ethical, legal, and public policy implications associated with implementing each option, as well as the unique safety and health hazards facing emergency workers and community health, or ecological hazards the cleanup actions themselves may cause. Often a stakeholder advisory group can provide the advice needed to consider all of the relevant information.

Stakeholders can provide valuable input to decision makers during the long-term recovery effort, and the key decision makers should establish a process that provides for appropriate stakeholder input. Identifying which stakeholders need to be involved in the process depends on the situation. In the case of a site contaminated as a result of an RDD or IND incident, stakeholders may include those whose health, economic well-being, and quality of life are currently affected or would be affected by the cleanup and the site's subsequent use. They may also include those who are legally responsible for the site's contamination and cleanup, those with regulatory responsibility, and those who may speak on behalf of environmental considerations or future generations.

Stakeholder input should be considered throughout all stages of the framework as appropriate, including analyzing the risks,

[7] 1.25 rems or rems if cumulative lifetime dose is less than 5(n–18), where n is the worker's age at the last birthday, and adequate past and current exposure records are maintained to show exposures do not exceed the standard's radiation levels (29 CFR 1910.1096).

identifying potential cleanup options, evaluating options, selecting an approach, and evaluating the effectiveness of the action afterwards. Their input will assist decision makers in providing a reasonable basis for actions to be taken. Further information on the importance and selection of stakeholders can be found in the Framework for Environmental Health Risk Management.

Decision makers can also benefit from the use of working groups that can provide expert technical advice regarding the decisions that need to be made during the long-term recovery process. Further information on how to incorporate the use of technical working groups is provided later in this appendix.

(a) The Stages of the Risk Management Framework for Responding to RDD and IND Incidents

The "Framework for Environmental Health Risk Management" has six stages:

1. Define the problem and put it in context.
2. Analyze the risks associated with the problem in context.
3. Examine options for addressing the risks.
4. Make decisions about which options to implement.
5. Take actions to implement the decisions.
6. Evaluate results of the actions taken.

Risk management decisions under this framework should do the following:

- Clearly articulate all of the problems in their public health and ecological contexts, not just those associated with radiation.
- Emerge from a decisionmaking process that elicits the views of those affected by the decision.
- Be based on the best available scientific, economic, and other technical evidence.
- Be implemented with stakeholder support in a manner that is effective, expeditious, and flexible.
- Be shown to have a significant impact on the risks of concern.
- Be revised and changed when significant new information becomes available.
- Account for their multi-source, multimedia, multi-chemical, and multi-risk contexts.
- Be feasible, with benefits reasonably related to their costs.
- Give priority to preventing risks, not just controlling them.
- Be sensitive to political, social, legal, and cultural considerations.

(1) Define the Problems and Put Them in Context

In the case of RDDs, the initial problem is caused by the dispersal of radioactive material. This dispersion may also result in the release of other types of contaminants (chemical or biological) or create other types of public health hazards. Individuals exposed may include workers and members of the public, and there may be different associated assumptions; for example, how long the individuals will be exposed in the future.

The potential for future radiation exposure must be considered within the context of the societal objectives to be achieved, and must examine the options in the context of all of the other sources, hazards, and impacts the community faces. There may also be broader public health or environmental issues that local governments and public health agencies have to confront and consider.

Understanding the context of a risk problem is essential for effectively managing the risk.

The goals of the recovery will extend well beyond the reduction of potential delayed radiation health effects, and may include:

- Public health protection goals, including acute hazards, long-term chronic issues, and protection of children and other sensitive populations.
- Social and economic goals, such as minimizing disruption to communities and businesses, maintaining property values, and protecting historical or cultural landmarks or resources.
- National security goals, such as maintaining and normalizing use of critical arteries, airports, or seaports for mass transit; maintaining energy production; and providing for critical communications.
- Public welfare goals, including maintaining hospital capacity, water treatment works, and sewerage systems for protection of community health; assuring adequate food, fuel, power, and other essential resources; and providing for the protection or recovery of personal property.

(2) Analyze the Risks

To make effective risk management decisions, decision makers and other stakeholders need to know what potential harm a situation poses and how great is the likelihood that people or the environment will be harmed. The nature, extent, and focus of a risk assessment should be guided by the risk management goals. The results of a risk assessment—along with information about public values, statutory requirements, court decisions, equity considerations, benefits, and costs—are used to decide whether and how to manage the risks.

Risk assessments can be controversial, reflecting the important role that both science and judgment play in drawing conclusions about the likelihood of effects on public health and the environment. It is important that risk assessors respect the objective scientific basis of risks and procedures for making inferences in the absence of adequate data. Risk assessors should provide decision makers and other stakeholders with plausible conclusions about risk that can be made on the basis of the available information, along with evaluations of the scientific support for those conclusions, descriptions of major sources of uncertainty, and alternative views.

Stakeholders' perception of a risk can vary substantially depending on such factors as the extent to which the stakeholders are directly affected, whether they have voluntarily assumed the risk or had the risk imposed on them, and whether they are connected with the cause of the risk. For this reason, risk assessments should characterize the scientific aspects of a risk and note its subjective, cultural, and comparative dimensions. Stakeholders play an important role in providing information that should be used in risk assessments and in identifying specific health and ecological concerns that should be considered.

(3) Examine the Options

This stage of the risk management process involves identifying potential recovery management options and evaluating their effectiveness, feasibility, costs, benefits, cultural or social impacts, and unintended consequences. This process can begin whenever appropriate, after defining the problem and considering the context. It does not have to wait until the risk analysis is completed, although a risk analysis often will provide important information for identifying and evaluating risk management options. In some cases, examining risk management options may help refine a risk analysis. Risk management goals may be redefined after decision makers and stakeholders gain some appreciation for what is feasible, what the costs and benefits are, and what contribution reducing exposures and risks can make toward improving human and ecological health.

Once potential options have been identified, the effectiveness, feasibility, benefits, detriments, and costs of each option must be assessed to provide input into selecting an option. Key questions include determining (1) the expected benefits and costs; (2) who gains the benefits and who bears the costs; (3) the feasibility of the option given the available time; resources; and any legal, political, statutory, and technology limitations; and (4) whether the option increases certain risks while reducing others. Other adverse consequences may be cultural, political, social, or economic—such as economic impacts on a community, including reduced property values or loss of jobs; environmental justice issues; and harming the social fabric of a town or tribe by relocating the people away from a contaminated area.

Many risk management options may be unfeasible for social, political, cultural, legal, or economic reasons—or because they do not reduce risks to the extent needed. For example, removing all the soil from an entire valley that is heavily contaminated with radioactive material may be infeasible. On the other hand, the costs of cleaning up an elementary school may be considered justified by their benefits: protecting children and returning daily activities to a sense of normalcy. Of course, the feasibility and cost-effectiveness of an option may change in the future as technology is improved or as society's values change.

(4) Make a Decision

A productive stakeholder involvement process can generate important guidance for decision makers. Thus, decisions may reflect negotiation and compromise, as long as risk management goals and intent are met. In some cases, win-win solutions are available that allow stakeholders with divergent views to achieve their primary goals.

Decision makers must balance the value of obtaining additional information against the need for a decision, however uncertain. Sometimes a decision must be made primarily on a precautionary basis. Every effort should be made to avoid "paralysis by analysis," in which the need for additional information, or the inability to reach consensus, is used as an excuse to avoid or

postpone decisionmaking. When sufficient information is available to make a risk management decision, or when additional information or analysis would not contribute significantly to the quality of the decision, the decision should not be postponed. "Value-of-information" techniques can be used to provide perspective on the next steps to be taken.

(5) Take Action To Implement Decision

When options have been evaluated and decisions made, a plan for action should be developed and implemented. Traditionally, implementation of protective actions is driven by decision makers' responsibilities to protect the public and the environment. State and local officials, business leaders, private industries, and the general public are generally the implementers of these protective actions. Actions may take considerable time for completion, and additional decisions may often be necessary as the actions proceed.

(6) Evaluate the Results

Decision makers and other stakeholders must continue to review what risk management actions have been implemented and how effective these actions have been. Evaluating effectiveness involves monitoring and measuring, as well as comparing actual benefits and costs to estimates made in the decisionmaking stage. The effectiveness of the process leading to implementation should also be evaluated at this stage. Evaluation provides important information about: Whether the actions were successful; whether they accomplished what was intended; whether the predicted benefits and costs were accurate; whether any modifications are needed to the risk management plan to improve success; whether any critical information gaps hindered success; whether any new information has emerged that indicates a decision or a stage of the framework should be revisited; whether the process was effective; how stakeholder involvement contributed to the outcome; and what lessons can be learned to guide future risk management decisions or to improve the decisionmaking process.

Evaluation is critical to accountability and to ensure wise use of valuable but limited resources. Tools for evaluation include environmental and health monitoring, research, disease surveillance, analyses of costs and benefits, and discussions with stakeholders.

(b) Technical Advisory Groups

Making decisions on the appropriate cleanup approaches and levels following an RDD or IND incident of any significant size will undoubtedly be a challenging task for decision makers. As already noted, the technical issues may be complex, many potentially competing factors will need to be carefully weighed, and public anxiety can be expected to be high in the face of a terrorist act involving radioactive materials. In addition, it is recognized that different regulatory authorities and organizations historically have taken different cleanup approaches for radioactively contaminated sites. Given this context, decision makers will need to determine how best to obtain the necessary technical input to support these decisions and demonstrate to the public that the final decisions are credible and sound.

There are a variety of ways this approach may be accomplished, and decision makers will need to tailor a process best suited to particular site circumstances. This section describes one process that is available to decision makers, which is based on the "ad hoc" mechanisms used for coordinating interagency expertise and assessing the effectiveness in general of the cleanup in response to the 2001 anthrax attacks. The anthrax cleanup involved the use of two technical groups that were used to advise key decision makers: a technical working group and a technical peer review advisory committee. (Unlike the other steps described in this appendix, these concepts are not described in the 1997 framework and are thus described in greater detail here.)

(1) Technical Working Group

Decision makers may choose to convene a technical working group to provide multi-agency, multi-disciplinary expert input to the planning and implementation of the cleanup effort, especially in setting appropriate cleanup goals and developing strategies for meeting them.

The group would be an ad hoc technical advisory group, not a decisionmaking body. It may include representatives from Federal, State, local, and tribal agencies. It may also include experts from the private sector or universities. Inclusion of a qualified local physician or health official also helps enhance the credibility of the working group within the community.

The composition of the group and the scope of its charter will vary depending on the needs of the situation and the nature of the contamination. For example, expertise in chemical or radiation toxicology will be needed for attacks involving chemical or radioactive agents. In some cases (e.g., where there is simultaneous release of similar contamination at numerous locations), one working group may be charged with providing national-level advice to be applied locally at multiple individual sites. In other cases (i.e., where contamination is minimal or exposure is unlikely), a technical working group may not be necessary.

A technical working group can provide expert input in the form of cross-agency coordination on technical issues, analysis of relevant requirements and guidelines, review of data and plans, and recommendations that will aid in ensuring that cleanup will be adequate. The group may also provide technical information to the Joint Information Center (JIC) to explain public health or environmental impacts to the public and the press. This group, like the advisory committee discussed below, reports to the decision maker, however, and not directly to the public. A technical working group can complement other "special teams" that may assist in the recovery effort, and representatives from these other special teams may be members of the technical working group.

(2) Technical Peer Review Advisory Committee

For significant decontamination efforts, the key decision makers may choose to convene an independent committee of technical experts to conduct a deliberative and comprehensive post-decontamination review. The committee would evaluate the effectiveness of the decontamination process and make recommendations on whether the decontaminated areas or items may be reoccupied or reused. It is important to note that although this review may enhance the scientific credibility of the final outcome, final cleanup decisions rest with decision makers.

The committee may consist of experts from the involved Federal agencies, State and tribal public health and environmental agencies, universities and private industry, the local health department, and possibly representatives of the employees and the community. To maximize objectivity, the committee would be an independent group that will advise and report to the decision makers, but not be a part of the decisionmaking team.

The scientific expertise in the committee should reflect the needs of the decision makers in conducting a peer review of all aspects of the decontamination process (e.g., environmental sampling, epidemiology, risk assessment, industrial hygiene, statistics, and engineering). Agencies on the committee may also have representatives on the technical working group, but in order to preserve the objectivity of the committee, it is best to designate different experts to serve on each group. The chair and co-chair of the committee should not be a part of the decisionmaking group at the site.

The decision makers should develop a charter for the committee, specifying the tasks committee members are intended to perform, the issues they are to consider, and the process they will use in arriving at conclusions and recommendations. The charter should also specify whether the individual members are expected to represent the views of their respective agencies or just their own opinions as independent scientific experts. Consensus among committee members is desirable but may not be possible. If consensus cannot be achieved, the charter should specify how decision makers expect the full range of opinions to be reflected in the final committee report. All members of the committee should agree to the terms of charter and sign it before participating.

In general, the technical peer review committee would evaluate pre- and post-decontamination sampling data, the decontamination plan, and any other information key to assessing the effectiveness of the cleanup. Based on this evaluation, the committee would make recommendations to the decision makers on whether cleanup has reduced contamination to acceptable levels, or whether further actions are needed before re-occupancy.

Appendix 3—Federal Implementation

This appendix provides an implementation plan for the protective action recommendations in the body of this

document. It also describes how to implement the risk management framework for recovery after a radiological or nuclear incident described in Appendix 2. This implementation plan presents the Federal role in long-term site restoration, and how Federal departments and agencies will interact with State and local government counterparts and the public. The plan does not attempt to provide detailed descriptions of State and local roles and expertise. It is assumed those details would be provided in State-, area-, and local-level planning documents that address radiological/nuclear terrorism incidents.

This site cleanup implementation plan is intended to function under the National Response Plan (NRP) with Federal agencies performing work consistent with their established roles, responsibilities and capabilities. Agencies should be tasked to perform work under the appropriate Emergency Support Function, as a primary or support agency, as described in the NRP.

This plan is designed to be compatible with the Incident Command/Unified Command (IC/UC) structure embodied in the National Incident Management System (NIMS). The functional descriptions and processes in this plan are provided to address the specific needs and wide range of potential impacts of an RDD or IND incident. During the intermediate phase, site restoration planners should begin the process described below, in coordination with the on-site IC/UC. Coordination of Federal activities may organize along IC/UC functional lines coordinating with the on-site organization to avoid redundancy. After early and intermediate phase activities have come to conclusion, and only long-term cleanup and site restoration activities are ongoing, the IC/UC structure may continue to support planning and decisionmaking for the long-term cleanup. The IC/UC may make personnel changes and structural adaptations to suit the needs of a lengthy, multifaceted and highly visible remediation process. For example, a less formal and structured command, more focused on technical analysis and stakeholder involvement, may be preferable for site restoration than what is required under emergency circumstances. Some of the Teams described below, such as the Decision Team or the Recovery Management Team may be coordinated from, or coincident with, functional portions of the IC/UC at the site. Although the makeup of the Teams may vary, the functions should remain the same.

Radiological and nuclear terrorism incidents cover a broad range of potential scenarios and impacts. For the sake of this appendix, it is assumed that the incident is of sufficient size to trigger a State request for Federal assistance, and that the Federal Government is the primary funding agent for site restoration. In particular the process, described for the late phase in Section D.3.3 of this document, assumes an incident of larger size. For smaller incidents, all of the elements in this section may not be warranted. The process should be tailored to the circumstances of the particular incident. It should be recognized that for some radiological/nuclear terrorist incidents, States will take the primary leadership role and contribute significant resources toward restoration of the site. This section does not address such a scenario.

As described earlier in the document, radiological/nuclear emergency responses are often divided roughly into three phases: (1) The early phase, when the plume is active and field data are lacking or not reliable; (2) the intermediate phase, when the plume has passed and field data are available for assessment and analysis; and (3) the late phase, when long-term issues are addressed, such as restoration of the site. For purposes of this appendix, the response to a radiological or nuclear terrorism incident is divided into two separate, but interrelated and overlapping, processes. The first is comprised of the early and intermediate phases of response, which consist of the immediate on-scene actions of State and local first responders under Incident Command/Unified Command (IC/UC), as well as those of Federal teams and officials, to perform incident stabilization, lifesaving activities, access control and security, emergency decontamination of persons and property, "hot spot" removal actions, dose reduction actions for members of the public and emergency responders, and resumption of basic infrastructure functions.

The second process pertains to environmental restoration, which is initiated soon after the incident (during the intermediate phase) and continues into the late phase. The process starts with the convening of stakeholders and technical subject matter experts to begin identifying and evaluating options for the restoration of the site. The environmental restoration process overlaps the intermediate phase activities described above and should be coordinated with those activities.

This implementation plan does not address law enforcement coordination during terrorism incident response, including how the Federal Bureau of Investigation (FBI) and DHS will manage on-scene actions immediately following an act of terror. Also, victim triage and other medical response aspects are not addressed. The plan presented in this appendix is not intended for use at site cleanups occurring under other statutory authorities such as EPA's Superfund program, the NRC's decommissioning program, or State-administered cleanup programs.

(a) Response and Recovery Activities Overview

The following are actions expected to occur according to existing plans, protocols, and capabilities. These early activities are primarily for context and are not intended to be exhaustive. The major change from current operating plans and protocols is the assumption of Federal leadership by DHS. The early phase of the response will be run at the scene by State and local responders, who are likely to make protective action decisions for the protection of public health, property, and environment early in the incident based on judgment, protocol, and what limited data are available. As Federal response assets arrive on scene, they will be incorporated into the on-scene incident command established by State and local officials and then become part of the unified command structure. Other Federal assets will be located in the Joint Field Office (JFO), co-located with a State/local Emergency Operations Center (EOC), if possible, to support the local incident management activities.

(1) Early Phase

0–3 hours.

- Local incident command established
- Radiation detected and a terrorism incident recognized
- DHS Homeland Security Operations Center (HSOC) notified of incident and mobilized to provide support and coordination until JFO is operational
- DHS determines if this incident is an Incident of National Significance, as defined in the NRP
- Initial protective actions ordered (downwind shelter-in-place/evacuation)

Comments:

- Some Federal assets will self-deploy under their own authority (HHS, FBI, OSHA, EPA, DOE)
- Protective actions by locals likely to occur before Federal assets arrive

6 hours.

- DHS designates a Principal Federal Official (PFO)
- Nuclear Incident Response Team (NIRT) activated by DHS (i.e. Radiological Assistance Program (RAP), Aerial Measuring System (AMS), FRMAC, Radiation Emergency Assistance Center/Training Site (REAC/TS), Radiological Emergency Response Team (RERT))
- Initial dispersion plots developed, other analyses done, and initial Federal protective action recommendations may be provided
- Domestic Emergency Support Team (DEST) deploys

Comments:

- An "Initial PFO" may be named until the PFO can arrive at the site
- The PFO may deploy with the DEST
- The PFO is responsible for coordinating Federal assets in collaboration with other Federal officials

6–12 hours.

- Initial JFO established to include FBI Joint Operations Center (JOC)
- Advance FRMAC stood up, field measurements being taken
- AMS arrives, provides initial deposition data to JFO

12–24 hours.

- JFO operational
- Federal teams in place (NIRT, DEST, Advisory Team for Food and Health)
- PAG being provided by JFO to State and local decision makers
- State requests, and is granted, a major disaster or emergency declaration

Early phase activities are expected to proceed as described under existing plans and agreements. If DHS declares an Incident of National Significance, the PFO will coordinate Federal activities from the JFO and integrate Federal activities in support of the State and local response. A Robert T. Stafford Disaster Relief and Emergency Assistance Act declaration will facilitate funding for public and individual assistance, and for recovery operations.

In general, the primary agencies expected to be represented in the unified command for an RDD or IND response incident are the agencies with primary response authority and include DHS, FBI, DOE, EPA, and other Federal, State, and local government agencies, as appropriate. Other Federal agencies (e.g., NRC, OSHA, U.S. Army Corps of Engineers, and DoD) will be requested to support the response in accordance with the NRP and NIMS.

(2) Intermediate Phase

During the intermediate phase, actions initiated in the early phase will continue as needed, such as lifesaving, fire suppression, perimeter security, and field data collection and analysis. Preliminary shelter-in-place or evacuation may occur within the first hours at the order of local incident command, but as data become available, Federal, State, and local officials will have better information with which to make protective action decisions, assist emergency workers, and inform the public.

Federal protective action recommendations will be provided to State and local governments on public dose constraints, restrictions regarding consumption of food and water, and dose reduction actions. Intermediate phase actions may include relocation, control of public access, decontamination of persons, decontamination/removal of "hot spots," response worker dose monitoring, population monitoring, food and water controls, and clearance of personal property. Public information and communication programs should be implemented as soon as practicable. Federal officials will work with State and local officials to develop information for the public in coordination with the JIC. (See the "Application of PAGs for RDD or IND Incidents" for more information on intermediate phase protective actions and recommendations.)

(3) Late Phase—Recovery and Site Restoration Activities Process Overview

As noted earlier, the long-term recovery process should be initiated during the intermediate phase. This process is interrelated with the ongoing intermediate phase activities, and the intermediate phase protective actions continue to apply through the late phase until cleanup is complete. However, the long-term recovery phase is likely to involve separate individuals who can focus on long-term restoration issues while others continue working on intermediate phase activities.

Cleanup planning and discussions should begin as soon as practicable after an incident to allow for selection of key stakeholders and subject matter experts, planning, analyses, contractual processes, and cleanup activities. States may choose to pre-determine stakeholders. These activities should proceed in parallel with ongoing intermediate phase activities, and coordination between these sets of activities should be maintained. Preliminary remediation activities carried out during the intermediate phase—such as emergency removals, decontamination, resumption of basic infrastructure function, and some return to normalcy in accordance with intermediate phase guidelines—should not be delayed for the final site remediation decision.

Presented below is a process for addressing environmental contamination that applies an optimization process for site cleanup. Optimization (described more fully in the "Application of PAGs for RDD or IND Incidents") is a flexible process in which numerous factors are considered to achieve an end result that balances local needs and desires, health risks, costs, technical feasibility, and other factors. The general process outlined below provides decision makers with input from both technical experts and stakeholder representatives, as well as providing an opportunity for public comment. The extent and complexity of the process for an actual incident should be tailored to the needs of the specific incident; for smaller incidents, the teams discussed below may not be necessary.

The goals of the process described below are: (1) Transparency—the basis for cleanup decisions should be available to stakeholder representatives, and ultimately to the public at large; (2) inclusiveness—representative stakeholders should be involved in decisionmaking activities; (3) effectiveness—technical subject matter experts should analyze remediation options, consider dose and risk benchmarks, and assess various technologies in order to assist in identifying a final solution that is optimal for the incident; and (4) shared accountability—the final decision to proceed will be made jointly by DHS, State, and local officials.

If Federal agencies do not have their own authorities to enable them to participate in the overall recovery and restoration process, then DHS would issue mission assignments to the involved Federal agencies to participate in the overall recovery and restoration process. Additional funding may be provided to State/local governments to perform response/restoration activities through other mechanisms. The components of the process are as follows:

(i) Teams

(A) Decision Team

Makeup: The Decision Team consists of the Secretary of DHS, the governor of the State, the mayor or equivalent, and the head of the lead Federal agency (or their respective designated representatives with authority to commit resources on behalf of affected persons).

Function: The function of the Decision Team is to make the final decision on recommendations received from the Recovery Management Team, commit resources, and commence cleanup activities. The Decision Team will raise unresolved national level policy issues to the Interagency Incident Management Group (IIMG) and/or to the Assistant to the President for Homeland Security, as appropriate.

(B) Recovery Management Team

State and DHS officials should select a Recovery Management Team as soon as possible after the incident. The size and makeup of the team will be dependent on the incident, but would be expected to consist of senior-level officials. The Recovery Management Team will normally be located at the JFO in order to enhance information flow and response coordination.

Makeup: The Recovery Management Team should include DHS, affected State and/or local representatives, and the Federal lead technical agency. The Recovery Management Team should be co-chaired by a DHS and State official. The makeup is flexible and may accommodate other individuals, as necessary.

Functions: The functions of the Recovery Management Team are to select participants for the Stakeholder and Technical Working Groups; provide facilitation, oversight and guidance during the cleanup analyses and decisionmaking process; oversee working group interactions; maintain communications between working groups; receive and review options and recommendations; ensure the development and implementation of community involvement and public information strategy; and prioritize recommendations when they are forwarded to the Decision Team for action.

(C) Stakeholder Working Group

The Stakeholder Working Group should be convened as soon as practicable, normally within weeks of the incident.

Makeup: The Stakeholder Working Group should include selected Federal, State, and local representatives; local non-governmental representatives; and local business interests. The exact selection and balance of stakeholders is incident specific. The Stakeholder Working Group should be co-chaired by DHS and State and/or local representatives.

Function: The function of the Stakeholder Working Group is to provide input to the Technical Working Group and the Recovery Management Team concerning local needs and desires for site restoration, proposed cleanup options, and recommendations for recovery.

(D) Technical Working Group

The Technical Working Group should be convened as soon as practicable, normally within weeks of the incident.

Makeup: The Technical Working Group should include selected Federal, State, local, and private sector subject matter experts in such fields as environmental fate and transport modeling, risk analysis, technical remediation options analysis, cost risk and benefit analysis, health physics/radiation protection, construction remediation practices, and relevant regulatory requirements. The exact selection and balance of subject matter experts is incident specific. The Technical Working Group should be chaired by the Federal lead technical agency assigned responsibility for performing cleanup operations and co-chaired by the State/local technical agency.

Function: The Technical Working Group provides expert input on technical issues, analysis of relevant regulatory requirements and guidelines, risk analyses, and evaluation of options as directed by the Recovery Management Team. The actual technical analyses will be the responsibility of the Federal lead technical agency for cleanup. The Technical Working Group should also receive input from the Stakeholder Working

Group. Technical Working Group written products are provided to the Recovery Management Team.

(ii) Activities

(A) Optimization and Recommendation (Lasts Weeks to Months)

The Recovery Management Team, in consultation with the Stakeholder Working Group and Technical Working Group, will develop a process for the three teams to work together in order to provide the opportunity for local concerns to inform the work of the Technical Working Group. The Technical Working Group and Recovery Management Team should assist in answering questions the Stakeholder Working Group may have regarding technical issues and provide information regarding cleanup options.

The Stakeholder Working Group should present local goals, needs, and desires for the use of the site, and prioritize current and future potential land uses and functions, such as utilities and infrastructure, light industrial, downtown business, and residential land uses. The lead technical agency will oversee technical optimization analyses for site cleanup in collaboration with the Recovery Management Team, Technical Working Group, and Stakeholder Working Group. The Technical Working Group will analyze assumptions, review risk analyses for various proposed remediation options, assess technical feasibility and cost of the options, and identify the estimated time to complete restoration options and their potential impacts on the local community.

The Stakeholder Working Group will provide input to the Technical Working Group, but may also provide options and recommendations directly to the Recovery Management Team. The Technical Working Group will consider input from the Stakeholder Working Group in its analyses, and provide input to the Recovery Management Team on remediation options and recommended approaches and rationale. It is important that the Technical Working Group and the Stakeholder Working Group maintain confidentiality concerning all aspects of the analyses. All outside contacts, such as press interviews, concerning the ongoing work and deliberations should be coordinated through the Recovery Management Team.

As the Technical Working Group completes its analyses and formulates its recommendations, it will present this information to the Recovery Management Team for final review. The Recovery Management Team will present the Decision Team with options, recommendations for final action, and supporting documentation.

(B) Public Review of Decision

The Decision Team should publish a summary of the process, the options analyzed, and the recommendation for public comment. Public meetings may also be convened as appropriate. Public comment should be considered and incorporated as appropriate. A reconvening of the Recovery Management Team, Stakeholder Working Group, and Technical Working Group may be useful for resolving some issues.

(C) Execute Cleanup

Assuming a Presidential declaration of a major disaster or emergency, DHS may issue mission assignments to the Federal departments and agencies that have the capability to perform the required cleanup or remediation activities. For significant de-contamination efforts, decision makers may choose to employ a technical peer review advisory committee to conduct a review of the effectiveness of the cleanup.

(b) Implications of DHS as Lead Federal Agency

In both the early and intermediate phases of the response, activities are expected to proceed as described under existing plans and agreements, except that the Federal response will be coordinated by DHS through the PFO. Anticipated actions include the following:

- When NIRT assets are called upon by the Secretary of DHS, they will come under the "authority, direction, and control" of the Secretary or his designee for the duration of the response. As such, they will not work for State or local governments, nor will they work independently under their agency of origin (either DOE or EPA), as they may under existing plans. A DOE senior energy official will act as the single point of contact for tasking of DOE nuclear/radiological support requested by the PFO or Federal Coordinating Office (FCO).
- Federal, State, and local field teams and experts should coordinate data collection and analysis through the FRMAC (now a DHS-directed asset) once it is operational.
- All Federal information—such as protective action recommendations, analyses, projections, and information to be provided to the public—is expected to pass through the PFO or FCO, in coordination with State and local officials, prior to its release to the press and the public. A JIC may be established to provide the organizational structure for coordinating and disseminating official information to the public. It is recognized, however, that in some cases, on-scene responding Federal agencies may need to communicate directly with the media/public on tactical operations and matters affecting public health and safety, particularly early in the response.

Appendix 4—Operational Guidelines for Implementation of the Protective Action Guides During RDD or IND Events

As noted in Section F of the document, operational guidelines are levels of radiation or concentrations of radionuclides that can be accurately measured by radiation detection and monitoring equipment, and then related or compared to the PAGs to quickly determine if protective actions need to be implemented. In most situations, the guidelines will be given in terms of external gamma rates or media-specific radionuclide concentration units. Both external and internal exposure potential will be considered in their development.

This appendix describes examples of measurable guidelines that will be developed by groups or categories to assist decision makers and response workers in deciding on and applying protective actions. This appendix discusses the guidelines qualitatively and does not provide actual values. The operational guidelines will be developed to provide reasonable assurance that the PAGs, the dose levels recommended in this report, can be met for appropriate situations under assumed circumstances. The guidelines will also consider the impact of protective actions, such as rinsing of vehicles to remove contamination, and when control of wash water is necessary. Actual conditions may warrant development of incident-specific guides, and this document does not preclude such development. Part of the development process will include the development of tools to allow for the preparation of site-specific operational guidelines that can be tailored to the emergency and the required response.

At this time, the operational guidelines are subdivided into six groups. They are:

- Access Controls During Emergency Response Operations (Group A)
- Relocation Areas (Group B)
- Critical Infrastructure Utilization in Relocation Areas (Group C)
- Temporary Access to Relocation Areas for Essential Activities (Group D)
- Transportation and Access Routes (Group E)
- Property Control for Release of Property to Non-impacted Areas (Group F)

The purpose of operational guidelines for each of these groups is discussed in the following paragraphs, along with examples of specific operational guides that are needed for each group. However, as discussed in Section F, some operational guidelines have been previously developed and are available (e.g., EPA PAG Manual [8] and "Radiological Emergency Response Health and Safety Manual" [9]). At this time, the appendix contains no recommendations for actual values. As they are developed, information on recommended operational guidelines and associated tools will be made available for review.

(a) Access Controls During Emergency Response Operations (Group A)

The operational guidelines in this group are intended for use during emergency response operations. They guide responders in establishing radiological control zones or boundaries in affected areas where response activities are being conducted. These operational guides are not intended to restrict emergency responder access but rather to inform responders of potential radiological hazards existing in the areas and to provide tools for those responsible for radiation protection during response activities. Group A operational guidelines may be used to restrict access of non-essential personnel and members of the public to specific areas.

These guidelines are most applicable during the early and intermediate phases of

[8] "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents," U.S. Environmental Protection Agency, May 1992, EPA–400–R–92–001.

[9] "*Radiological Emergency Response Health and Safety Manual*," May 2001, available at *http://www.nv.doe.gov/programs/frmac/DOCUMENTS.htm.*

the emergency when the situation has not been fully stabilized or characterized and may therefore need to be applied initially with limited data and then revised (e.g., areas reclassified or remarked), as appropriate. Group A operational guidelines are generally for the areas directly impacted by the RDD or IND incident where first responders and emergency response personnel are working. However, they may also be applicable in contaminated areas where unrelated accidents or emergencies occur after the RDD or IND situation has been stabilized. Group A operational guidelines are not intended to restrict emergency response or lifesaving actions, but they are rather intended to help focus radiological protection resources on areas of highest priority. They do, however, define areas that should be restricted to the public and non-essential personnel. Examples of operational guidelines being developed in this group include those for the following:

(1) Life and Property Saving Measures

Areas exceeding guidance levels pose a significant radiological hazard even if access is for short periods. Access should be permitted only when there is a significant benefit associated with the activity to be conducted that outweighs the associated radiological risks. The PAGs applied for development of these operational guides include the 25 rem lifesaving response worker guidelines (Table 1B in Appendix 1) and the property-saving guidelines that are applicable when it is not possible to limit response worker dose to the 5 rem worker PAG.

(2) Emergency Worker Demarcation

Areas exceeding these guides should not be used to restrict response worker access. However, the public and non-essential personnel should not be allowed general access to the areas exceeding these levels. To the extent time and resources permit and do not interfere with response actions, officials responsible for radiation protection should establish procedures to monitor worker access and exposures in these areas. In most situations, the worker protection PAG of 5 rems is applicable (Table 1 in the main text and Table 1B in Appendix 1).

(b) Relocation Areas (Group B)

The operational guidelines for this group are intended as screening values to delineate areas that exceed the relocation PAGs. These, or similar operational guides, have been developed or are presented in the FRMAC manual (Volume II) and will be assessed. Examples of operational guidelines being developed in this group include:

(1) Relocation From Residential Areas

Areas exceeding these levels pose a significant possibility of causing doses that exceed relocation PAGs under normal residential use, and unless specific assessments indicate otherwise, the public should be relocated from the areas. The 2 rems in the first year and 0.5 rem/yr thereafter (Table 1) are applicable for the development of these operational guidelines. Temporary access may be consistent with Group D, Temporary Access Operational Limits.

(2) Relocation Considerations for Commercial/Industrial Areas

Areas exceeding these guides pose a significant likelihood for causing doses that exceed public relocation PAGs under normal industrial or commercial use scenarios and should be considered for relocation. The 2 rems in the first year and 0.5 rem/yr thereafter (Table 1) are applicable for the development of these operational guidelines unless the employers have radiation protection programs in place to protect workers consistent with applicable requirements (e.g., OSHA 29 CFR 1910.1096, NRC 10 CFR 20, DOE 10 CFR 835), or unless site-specific analyses justify other operational limits. Temporary access for essential activities should be guided by operational guides in Group D. Or, if the facility is providing a service necessary to maintain public welfare, Group C operational limits should serve as a guide.

(3) Other Areas

These operational guides apply to areas that are not used as residences and are not normal work places (e.g., parks, cemeteries, monuments). The value of these guidelines will likely differ from the relocation areas previously mentioned because of differing occupancy and use, although the dose guidelines remain 2 rems in the first year and 0.5 rems/yr thereafter (Table 1). Access to such areas should be limited if the guides are exceeded.

These relocation operational guidelines will provide reasonable assurance that the worker or the public, as appropriate, will not exceed PAGs, and that appropriate radiological protection supervision is available in, and focused on, the higher risk areas so as to provide protection and oversight for emergency responders.

(c) Critical Infrastructure Utilization in Relocation Areas (Group C)

The operational guidelines for this group are intended as screening values to ensure facilities critical to the public welfare can continue to operate if needed. These guides only apply to facilities in areas that exceed relocation PAGs and, as a result, have been closed for general use and access. The operational guidelines are generally applicable during intermediate phase activities.

During the emergency activities, Group A operational guidelines will generally be applicable or in use. Group C operational guides assume a generally stable and characterized situation. The levels are derived assuming employees spend two thousand hours per year (a more realistic value may be employed if known) on the job and that the maximum dose will be less than 5 rems/yr. Facilities that exceed these operational guides and are essential for overall public welfare may need to be assessed to identify specific conditions and possible mitigation controls. In the following list of possible operational guidelines, a number of different guides have been identified, and future analyses may indicate that the same operational guidelines may be used for all or some of the facilities so that the list may be compressed.

(1) Hospitals

These guidelines are recommended to allow continued use of health care facilities and services that are in areas that exceed relocation criteria. If alternative facilities and services are available, they should be employed before applying these guidelines.

(2) Airports, Railroads, and Ports

These guidelines are recommended to allow use of transport facilities located in areas exceeding relocation guidelines that are essential to providing services and products necessary for the welfare of the region.

(3) Water and Sewer Facilities

These guidelines are for utilities in relocation areas that are necessary to provide services for the region.

(4) Power and Fuel

These guidelines are for utilities in relocation areas that are necessary to provide services for the region.

It is emphasized that these guidelines only apply when continuous operation of these and other facilities are essential to maintaining the public welfare and when this cannot be achieved under Group B or Group D guidelines for relocation and temporary access decisions, respectively.

(d) Temporary Access to Relocation Areas for Essential Activities (Group D)

The public, or employees of businesses, may need to have temporary access to residences or commercial, agricultural, or industrial facilities in order to retrieve essential records or equipment, conduct maintenance to protect the facility, prevent environmental damage, attend to animals, or retrieve pets. These operational guides are levels at which these actions can be taken without radiological supervision. The public or employees may occasionally access (a few days per month) the areas not exceeding these guides. Temporary access to relocation areas that exceeds the levels should only be permitted under the supervision, or with the permission of, radiation protection personnel. These operational guidelines will be derived to provide assurance that the doses will be below the 0.5 rem relocation PAG (Table 1, after the first year) for the following:

(1) Worker Access to Businesses for Essential Actions

Areas meeting these levels may be accessed for limited periods to retrieve essential materials or perform essential functions (e.g., perform facility maintenance, attend to animals, maintain security).

(2) Public Access to Residences for Retrieval of Critical Property, Pets, or Records

Areas in relocation areas meeting these criteria may be accessed by the public for limited periods to attend to important maintenance, retrieve needed records, or retrieve pets.

(e) Transportation and Access Routes (Group E)

The operational guidelines for this group are intended to assist in determining if transportation routes or access ways may be used by the public for general, limited, or restricted use. The relocation PAGs are used as the basis for operational guidelines for general access. Restricted use may be based on other guidelines as well. For example, operational guides may be defined for industrial/commercial use of various roads, bridges, or access ways. These may be necessary to allow for access between non-relocation areas via a relocation area or to allow for emergency recovery access in the immediate area of the RDD or IND incident. These operational guides assume regular or periodic use and are not appropriate for one-time events, such as evacuation or relocation actions. In general, these operational guidelines need to be developed giving consideration to the relocation PAGs, worker protection guidelines, and potential for combined doses. Three examples of operational guidelines for this group are discussed as follows, and as these are developed, it is possible that all or some of the categories can be consolidated.

(1) Bridges

Bridges meeting these operational guidelines are acceptable for public vehicular use (or restricted use, where appropriate).

(2) Streets and Thoroughfares

Streets and thoroughfares meeting these operational limits are acceptable for general vehicular passage or restricted vehicular passage, as appropriate.

(3) Sidewalks and Walkways

These operational limits are for non-vehicular access (e.g., individuals walking from parking lots or trains to places of business, or workers delivering goods). They should also apply to bridges and streets if significant non-vehicular passage is anticipated.

(f) Release of Property From Radiologically Controlled Areas (Group F)

During response and recovery operations, property (vehicles, equipment, and waste) will need to be cleared from controlled areas. The operational guidelines in this group will be developed to support such actions. Because retrieval of cleared or released properties would be difficult, wherever practicable, these levels should be similar to those likely to define late phase goals. For this reason, they should not be applied to property that will remain in use in controlled areas. Many areas may not exceed relocation PAGs and therefore, they will be accessible to the public at levels considerably above the operational guides in this group. Use of such property should not be assumed unacceptable merely because it exceeds these guides. These operational guidelines should also be used for screening property that was outside the controlled area. In general, the operational guides in this group provide reasonable assurance that the property cleared is acceptable for long-term, unrestricted use (or designated disposition in the case of wastes) without further or future reassessment. Property includes the following:

(1) Personal Property (Except Waste)

These operational guides will apply to property to be permanently cleared from the affected area for general reuse. They should not be used for property that will continue to be used in the affected areas (e.g., areas where residual activity is significantly above background).

(2) Waste

The RDD or IND incident may generate significant quantities of waste that contain small amounts of radioactivity. This waste may be rubble resulting from the device or from demolition associated with recovery, or it may be in the form of municipal waste or industrial waste from areas that are contaminated at levels below the relocation PAGs and associated operational guidelines. Waste meeting these operational limits may be considered for disposal in normal landfills, and waste exceeding these limits should be disposed at appropriate low-level radioactive waste sites.

(3) Hazardous Waste

Hazardous waste resulting from the RDD or IND or associated recovery operations will contain varied levels of residual radioactive material. Waste meeting these criteria may be considered for treatment and disposal to a legally permitted facility. Waste exceeding these concentrations should be managed as mixed waste.

(4) Real Property

Relocation PAGs and associated operational guides will be developed for application to the management of real property, but it is recognized that the optimization process applied during late phase activities (which will likely overlap with the intermediate phase) will be applied to areas that contain residual radioactive material at concentrations below the operational guides for relocation. Until the optimization process determines the target cleanup levels, it is not possible to generically define release operational guidelines for release of real property. Tools and unit concentrations to dose factors may be developed that can be applied on a site-specific basis by decision makers involved in the optimization to help define interim, or even final, operational guides for certain areas. However, no suggested or recommended generic operational guidelines can be developed before optimization process considerations.

Group F operational guides are intended to provide guidance for permanent clearance of property leaving radiologically controlled areas. These guides are developed to provide reasonable assurance that attaining them will minimize or eliminate the need for further response actions. It will be difficult to collect or re-call "released property" should late phase decisions about "safe exposures" identify more restrictive levels than those used to release property in the early and intermediate phases. Therefore, the property control operational guides (Group F) will be based on potential doses that are a fraction of the intermediate phase PAGs. Wherever practicable, these levels should be similar to those likely to define late phase goals. As with all the operational guidelines, alternative levels may be developed and used if conditions and needs justify. Group F operational guides are not applicable to continued use of property in impacted areas.

Note: Although agencies have identified values for selected operational guides, none have reached consensus. The development of these values will continue as part of an interagency process. Several sources exist that contain useful operational guidelines or information to support the development of operational guidelines that will eventually be included directly, or by reference with, the recommendations in this document and subsequent reports documenting the operational guidelines. The interagency workgroup developing these guidelines will consider these and other materials being developed by Federal agencies and other groups, such as the American National Standards Institute (ANSI) and National Council on Radiation Protection and Measurement (NCRP). Consistent with direction from Congress in FY2003 Supplemental Appropriations Legislation, the DOE is conducting analyses and developing models to support the completion of operational guidelines identified in this appendix. A significant fraction of the operational guidelines were completed and submitted for interagency review in late FY2005. Completion of the analyses and revisions based on interagency input (and peer review) is anticipated in the middle of FY2006. As the operational guidelines are developed and worked through the interagency process, they will be made available for review on the Internet.

Appendix 5—Acronyms/Glossary

AMS

Aerial Measuring System—A DOE technical asset consisting of both fixed wing and helicopter systems for measuring radiation on the ground; a deployable asset of the NIRT.

ALARA

As low as reasonably achievable—A process to control or manage radiation exposure to individuals and releases of radioactive material to the environment so that doses are as low as social, technical, economic, practical, and public welfare considerations permit.

ANSI

American National Standards Institute.

CFR

Code of Federal Regulations.

CMS

Consequence Management Site Restoration, Cleanup and Decontamination Subgroup.

DEST

Domestic Emergency Support Team—A technical advisory team designed to pre-deploy and assist the FBI Special Agent in

Charge. The DEST may deploy after an incident to assist the FBI and the PFO.

DHS

Department of Homeland Security.

DIL

Derived Intervention Level—the concentration of a radionuclide in food expressed in Becquerel/kg which, if present throughout the relevant period of time (with no intervention), could lead to an individual receiving a radiation dose equal to the PAG.

DOD

Department of Defense.

DOE

Department of Energy.

DRL

Derived Response Level—A level of radioactivity in an environmental medium that would be expected to produce a dose equal to its corresponding PAG.

EOC

Emergency Operations Center.

EPA

Environmental Protection Agency.

FBI

Federal Bureau of Investigation.

FCO

Federal Coordinating Officer.

FDA

Food and Drug Administration.

FRMAC

Federal Radiological Monitoring and Assessment Center—A coordinating center for Federal, State, and local field personnel performing radiological monitoring and assessment—specifically, providing data collection, data analysis and interpretation, and finished products to decision makers. The FRMAC is a deployable asset of the NIRT.

HHS

Department of Health and Human Services.

HAZWOPER

Hazardous Waste Operations and Emergency Response Standard (29 CFR 1910.120).

HSOC

Homeland Security Operations Center—DHS headquarters to integrate and provide overall steady-state threat monitoring and situational awareness for domestic incident management on a 24/7 basis.

HSPD

Homeland Security Presidential Directive.

IC/UC

Incident Command/Unified Command—A system to integrate various necessary functions to respond to emergencies. The system is widely used by local responders. Under Unified Command, multiple jurisdictional authorities are integrated.

IIMG

Interagency Incident Management Group—A headquarters-level group to facilitate national-level domestic incident management and coordination of Federal operations and resources for certain incidents defined in HSPD–5 or in anticipation of such incidents.

IND

Improvised Nuclear Device—Nuclear weapons that are fabricated by an adversary State or terrorist group from illicit nuclear material and that could produce nuclear explosions.

JFO

Joint Field Office—The operations of the various Federal entities participating in a response at the local level should be collocated in a Joint Field Office whenever possible, to improve the efficiency and effectiveness of Federal incident management activities.

JIC

Joint Information Center—A focal point for the coordination and provision of information to the public and media concerning the Federal response to the emergency.

JOC

Joint Operations Center—The focal point for management and coordination of local, State and Federal investigative/law enforcement activities.

NCRP

National Council on Radiation Protection and Measurement.

NIMS

National Incident Management System—The Homeland Security Act of 2002 and HPSD–5 directed the DHS to develop a NIMS. The purpose of the NIMS is to provide a consistent nationwide approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents.

NIRT

Nuclear Incident Response Team—Created by the Homeland Security Act of 2002, the NIRT consists of radiological emergency response assets of the DOE and the EPA. When called upon by the Secretary for Homeland Security for actual or threatened radiological incidents, these assets come under the "authority, direction, and control" of the Secretary.

NRC

Nuclear Regulatory Commission.

NRP

National Response Plan—The Homeland Security Act of 2002 and the HPSD–5 directed the DHS to develop an NRP. The purpose of the NRP is to integrate Federal Government domestic emergency prevention, preparedness, response, and recovery plans into one all-discipline, all-hazards plan.

OSHA

Occupational Safety and Health Administration.

PAG

Protective Action Guide—Provides the projected dose to a reference individual, from an accidental or deliberate release of radioactive material at which a specific protective action to reduce or avoid that dose is recommended.

PFO

Principal Federal Official—The PFO will act as the Secretary of Homeland Security's local representative, and will oversee and coordinate Federal activities for the incident.

PPE

Personal Protective Equipment.

R

Roentgen—Measure of exposure in air.

RAD

Radiation absorbed dose.

RAP

Radiological Assistance Program—A DOE emergency response asset that can rapid deploy at the request of State or local governments for technical assistance in radiological incidents. RAP teams are a deployable asset of the NIRT.

RDD

Radiological Dispersal Device—A device or mechanism that is intended to spread radioactive material from the detonation of conventional explosives or other means.

REAC/TS

Radiation Emergency Assistance Center/Training Site—A DOE asset located in Oak Ridge, TN, with technical expertise in medical and health assessment concerning internal and external exposure to radioactive materials. REAC/TS is a deployable asset of the NIRT.

rem

The conventional unit of dose equivalent. The product of the absorbed dose in rad, a quality factor related to the biological effectiveness of the radiation involved and any other modifying factors.

RERT

Radiological Emergency Response Team—An EPA team trained to do environmental sampling and analysis of radionuclides. RERT provides assistance during responses and takes over operation of the FRMAC from DOE at a point in time after the emergency phase. RERT is a deployable asset of the NIRT.

TEDE

Total Effective Dose Equivalent—The sum of internal and external doses.

Dated: December 5, 2005.

Robert Stephan,

Assistant Secretary, Office of Infrastructure Protection, Preparedness Directorate.

[FR Doc. 05–24521 Filed 12–30–05; 8:45 am]

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Tuesday,
January 3, 2006

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1 et al.

Federal Acquisition Regulations; Final Rules and Interm Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2005–07; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–07. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.acqnet.gov/far*.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–07 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.acqnet.gov/far*. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

Item	Subject	FAR case	FAR Analyst
I	Transportation: Standard Industry Practices	2002–005	Parnell.
II	Common Identification Standard for Contractors(Interim)	2005–015	Jackson.
III	Change to Performance–based Acquisition	2003–018	Jackson.
IV	Free Trade Agreements–Australia and Morocco	2004–027	Marshall.
V	Deletion of the Very Small Business Pilot Program	2005–013	Cundiff.
VI	Purchases From Federal Prison Industries–Requirement for MarketResearch	2003–023	Nelson.
VII	Exception from Buy American Act for CommercialInformation Technology (Interim)	2005–022	Marshall.
VIII	Removal of Sanctions Against Libya	2005–026	Marshall.
IX	Elimination of Certain Subcontract NotificationRequirements	2003–024	Cundiff.
X	Annual Representations and Certifications–NAICSCode/Size	2005–006	Zaffos.
XI	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–07 amends the FAR as specified below:

Item I—Transportation: Standard Industry Practices (FAR Case 2002–005)

This final rule amends FAR Parts 1, 42, 46, 47, 52, and 53 to clarify and update the FAR coverage to reflect the latest changes to the Federal Management Regulation and statutes that require use of commercial bills of lading for domestic shipments. This final rule amends the FAR to—

- Move FAR Subpart 42.14, Traffic and Transportation Management, to FAR Part 47, Transportation;
- Delete the clauses at FAR 52.242–10 and FAR 52.242–11 and revise and relocate FAR clause 52.242–12 to FAR 52.247–68;
- Add definitions of "bill of lading," "commercial bill of lading," and "Government bill of lading" and clarify the usage of each term throughout FAR Part 47;
- Add definitions of "Government rate tenders," "household goods," "noncontiguous domestic trade," and "released or declared value";
- Require the use of commercial bills of lading for domestic shipments;
- Revise the references to "49 U.S.C. 10721" to read "49 U.S.C. 10721 and 13712" throughout FAR Part 47 to make it clear that Government rate tenders can be used in certain situations for the transportation of household goods by rail carrier (authorized by 49 U.S.C. 10721), as well as by motor carrier, water carrier, and freight forwarder (authorized by 49 U.S.C. 13712 and the definition of "carrier" at 49 U.S.C. 13102); and
- Update the fact that the Federal Motor Carrier Safety Administration prescribes commercial zones at 49 CFR 372 Subpart B.

Item II—Common Identification Standard for Contractors (FAR Case 2005–015)

This interim rule amends the FAR by addressing the contractor personal identification requirements in Homeland Security Presidential Directive (HSPD–12), "Policy for a Common Identification Standard for Federal Employees and Contractors," and Federal Information Processing Standards Publication (FIPS PUB) Number 201, "Personal Identity Verification (PIV) of Federal Employees and Contractors." The primary objectives of HSPD–12 are to establish a process to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy by establishing a mandatory, Governmentwide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors.

Item III—Change to Performance-based Acquisition (FAR Case 2003–018)

This final rule amends the FAR by changing the terms "performance-based contracting (PBC)" and "performance-based service contracting (PBSC)" to "performance-based acquisition (PBA)" throughout the FAR; adding applicable PBA definitions of "Performance Work Statement (PWS)" and "Statement of Objectives (SOO)", and describing their uses; clarifying the order of precedence for requirements; eliminating redundancy where found; modifying the regulation to broaden the scope of PBA and give agencies more flexibility in applying PBA methods to contracts and orders of varying complexity; and reducing the burden of force-fitting contracts and orders into PBA, when it is not appropriate.

Item IV—Free Trade Agreements—Australia and Morocco (FAR Case 2004–027)

This final rule converts the interim rule published at 69 FR 77870,

December 28, 2004, to a final rule with changes. It allows contracting officers to purchase the products of Australia without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. The U.S. Trade Representative negotiated Free Trade Agreements with Australia and Morocco, which were scheduled to go into effect on or after January 1, 2005, according to Public Laws 108–286 and 108–302. However, the Morocco Free Trade Agreement has not yet entered into force and, therefore, the implementation of the Morocco Free Trade Agreement has been removed from the final rule. The Australian Free Trade Agreement joins the North American Free Trade Agreement (NAFTA) and the Chile and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Australian Free Trade Agreement is $58,550 (the same as other Free Trade Agreements to date).

Item V—Deletion of the Very Small Business Pilot Program (FAR Case 2005–013)

This final rule amends the FAR to delete the Very Small Business Pilot Program. Under the pilot program, contracting officers were required to set-aside for very small business concerns certain acquisitions with an anticipated dollar value between $2,500 and $50,000. The Councils are removing the FAR coverage because the legislative authority for the program terminated on September 30, 2003. Acquisitions previously set aside for pilot program vendors will now be open to other small businesses.

Item VI—Purchases From Federal Prison Industries–Requirement for Market Research (FAR Case 2003–023)

This final rule converts the interim rule published in FAC 2001–21 at 69 FR 16148, March 26, 2004, and the interim rule published as Item I of FAC 2005–03 at 70 FR 18954, April 11, 2005, to a final rule with amendments at FAR 8.602 to clarify the applicability of the rule. The rule implements Section 637 of Division H of the Consolidated Appropriations Act, 2005. Section 637 provides that no funds made available under the Consolidated Appropriations Act for fiscal year 2005, or under any other Act for fiscal year 2005 and each fiscal year thereafter, shall be expended for purchase of a product or service offered by Federal Prison Industries, Inc., unless the agency making the purchase determines that the offered product or service provides the best value to the buying agency, pursuant to Governmentwide procurement regulations issued pursuant to 41 U.S.C. 421(c)(1) that impose procedures, standards, and limitations of 10 U.S.C. 2410n.

Item VII—Exception from Buy American Act for Commercial Information Technology (FAR Case 2005–022)

This interim rule amends FAR 25.103 and FAR Subpart 25.11 to implement Section 517 of Division H, Title V of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447). Section 517 authorizes exemption from the Buy American Act for acquisitions of information technology that are commercial items. This applies only to the use of FY 2005 funds. This same exemption appeared last year in section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004 (Pub. L. 108–199). The FY 04 exemption was implemented through deviations by the individual agencies.

The interim rule is based on the estimation that the exemption of commercial information technology is likely to continue. If the exception does not appear in a future appropriations act, a prompt change to the FAR will be made to limit applicability of the exemption to the fiscal years to which it applies. The effect of this exemption is that the following clauses are no longer applicable in acquisition of commercial information technology:

- FAR 52.225–1, Buy American Act—Supplies.
- FAR 52.225–2, Buy American Act Certificate.
- FAR 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act.
- FAR 52.225–4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.

This is because the Buy American Act no longer applies; and the Free Trade Agreement non-discriminatory provisions are no longer necessary, since all products now are treated without the restrictions of the Buy American Act.

Item VIII—Removal of Sanctions Against Libya (FAR Case 2005–026)

This final rule removes Libya from the list of prohibited sources at FAR Subpart 25.7 and the associated clause at 52.225–13, Restriction on Certain Foreign Purchases. Acquisitions of products from Libya may still be subject to restrictions of the Buy American Act, trade agreements, or other domestic source restrictions. The Department of State has not yet removed Libya from the list of state sponsors of terrorism.

Item IX—Elimination of Certain Subcontract Notification Requirements (FAR Case 2003–024)

This final rule converts, with minor changes, the Federal Acquisition Regulation (FAR) interim rule published in the **Federal Register** at 70 FR 11761, March 9, 2005. The rule impacts contractors with Department of Defense (DoD), National Aeronautics and Space Administration (NASA), or Coast Guard cost-reimbursement contracts and Government personnel who award and administer those contracts. The interim rule amended FAR 44.201–2, Advance Notification Requirements, and 52.244–2, Subcontracts, to implement Section 842 of the National Defense Authorization Act for Fiscal Year 2004, in Public Law 108–136. Section 842 removed the requirement under cost-reimbursement contracts with DoD, Coast Guard, and NASA for contractors to notify the agency before the award of any cost-plus-fixed-fee subcontract or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract if the contractor maintains a purchasing system approved by the contracting officer for the contract. The final rule makes two changes that resulted from one of the public comments. The final rule deletes Alternate I from FAR 44.204, Contract clauses for the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, and deletes the current Alternate I from 52.244–2, Subcontracts.

Item X—Annual Representations and Certifications—NAICS Code/Size (FAR Case 2005–006)

This final rule amends the FAR provision at 52.204–8 to provide a place for contracting officers to inform prospective offerors of the NAICS code and small business size standard applicable to the procurement.

Item XI—Technical Amendments

Editorial changes are made at FAR 9.203(b)(2), 11.102, 11.201(a), 11.201(b), 11.201(d)(2), 11.201(d)(3), 11.201(d)(4), 11.204(b), 25.1101(e)(2), and the provisions at 52.211–2 and 52.212–1 in order to update references.

The authority citation for FAR parts 27, 34, 38, 39, 43, 46, 48, and 50 is revised.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–07 is issued under the authority of

the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-07 is effective February 2, 2006 except for Items II, IV, V, VI, VII, IX, X and XI which are effective January 3, 2006

Dated: December 21, 2005.

Domenic C. Cipicchio,

Acting Director, Defense Procurement and Acquisition Policy.

Dated: December 16, 2005.

Roger D. Waldron,

Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: December 14, 2005.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 05–24545 Filed 12–30–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 42, 46, 47, 52, and 53

[FAC 2005–07; FAR Case 2002–005; Item I]

RIN 9000–AJ84

Federal Acquisition Regulation; Transportation: Standard Industry Practices

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement changes to the Interstate Commerce Act, which abolished tariff-filing requirements for motor carriers of freight and the Interstate Commerce Commission (ICC). Also, the rule implements changes to the Federal Management Regulation that require use of commercial bills of lading for domestic shipments.

DATES: *Effective Date:* February 2, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAC 2005–07, FAR case 2002–005. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 4004, January 27, 2004, with request for comments. Thirteen comments from five respondents were received. A discussion of the comments is provided below. Consideration of these comments resulted in minor changes to the rule. In addition, editorial changes were made in the rule.

This final rule amends the FAR to implement changes to the Interstate Commerce Act. The Act has been substantially amended in recent years, most notably by the Trucking Industry Regulatory Reform Act of 1994 (Title II of Public Law 103–311), which abolished tariff-filing requirements for motor carriers of freight, and by the Interstate Commerce Commission (ICC) Termination Act of 1995 (Pub. L. 104–88), which abolished the ICC. Also, the rule implements changes to the Federal Management Regulation that require use of commercial bills of lading for domestic shipments. This rule amends the FAR to—

- Move FAR Subpart 42.14, Traffic and Transportation Management, to FAR Part 47, Transportation;
- Delete the clauses at FAR 52.242–10 and FAR 52.242–11 and revise and relocate FAR clause 52.242–12 to FAR 52.247–68;
- Add definitions of "bill of lading," "commercial bill of lading," and "Government bill of lading" and clarify the usage of each term throughout FAR Part 47;
- Add definitions of "Government rate tenders," "household goods," "noncontiguous domestic trade," and "released or declared value";
- Require the use of commercial bills of lading for domestic shipments;
- Revise the references to "49 U.S.C. 10721" to read "49 U.S.C. 10721 and 13712" throughout FAR Part 47 to make it clear that Government rate tenders can be used in certain situations for the transportation of household goods by rail carrier (authorized by 49 U.S.C. 10721), as well as by motor carrier, water carrier, and freight forwarder (authorized by 49 U.S.C. 13712 and the definition of "carrier" at 49 U.S.C. 13102);
- Update the fact that the Federal Motor Carrier Safety Administration prescribes commercial zones at 49 CFR Part 372, Subpart B; and
- Make other conforming and editorial changes to FAR Part 47 and related clauses.

B. Summary and Discussion of Public Comments

Comment 1: In reading the existing and proposed text of the clause at FAR 52.247–67 it is not clear that after the commercial bill of lading (CBL) is audited and the CBL is forwarded to the paying office for payment, who the paying office makes the check out to. Is it the shipper or is it the contractor for the supply contract that contains the clause at FAR 52.247–1, F.O.B. Origin?

Councils' response: The Councils recommend no action in response to this comment. The intent of the FAR 52.247–67 revision was to change the title and include mandatory use of prepayment audits for transportation billings in respect to cost-reimbursable contracts. FAR 52.247–67 is not meant to address issues of payment. The intent of this clause is for contractors to submit CBLs to the contracting officer for a prepayment audit in excess of $100 (threshold raised from $50 to $100) for cost-reimbursement. In this scenario, the "contractor" has already paid the "carrier." The contractor submits the paid CBL to the contracting activity (fill-in completed by the contracting officer.) The agency makes a determination the transportation charges are valid, proper, and conform to related services with tariffs, quotations, agreements or tenders prior to contractor reimbursement. Previously, contractors were responsible for forwarding copies of freight bills/invoices, CBL's passenger coupons, and supporting documents along with a statement to General Services Administration (GSA). The new process places the responsibility with the contracting activity to conduct CBL prepayment audit and forward original copies of paid freight bills/invoices, bills of lading, passenger coupons, and supporting documents as soon as possible following the end of the month in one package, for postpayment audit to GSA.

In response to the question "who is the check made out to?" It will always be the contractor, since the carrier is already paid; however, the mechanics of the check process is outside the scope of this clause. Also note the commentor's reference to FAR clause 52.247–1, F.O.B. Origin. The clause title should read "Commercial Bill of Lading Notations."

Comment 2: FAR clause 52.247–67 (GSA Commercial Transportation Bills of Lading) requires that all cost-type contractors compile and submit to the General Services Administration each month copies of all vouchers for travel (air and train coupons), freight charges, and even air express and local courier bills from primes and first-tier subcontracts. Commenter suggests deleting the clause or increasing the thresholds to avoid burdensome requirements on small business.

Councils' response: Nonconcur. The proposed change should alleviate some of the burden referred to by the commenter. The contractor no longer submits supporting documents to GSA but to the activity designated in the FAR clause at 52.247–67(a)(3). The passage of the Travel and Transportation Reform Act of 1998, Public Law 105–264, incorporated changes to the payment process of all transportation and related services invoices. By amending Title 31, United States Code, it establishes the requirements for prepayment audits of Federal agency transportation expenses. The FAR threshold is now raised for bills of lading with freight shipment charges exceeding $100 from $50. The Administrator of General Services has responsibility for exemptions as authorized by Public Law 105–264 and GSA will continue to monitor the established threshold, as appropriate. Paragraphs (b), (c) and (d) of the clause at 52.247–67, now called Submission of Transportation Documents for Audit, have been relocated to FAR 47.103–1, paragraphs (c), (d) and (e), with minor adjustments. The reason for this relocation is that the focus of responsibility for submission of these documents to GSA has changed from the contractor to the appropriate government agency.

Comment 3: FAR 47.101, Policies, paragraph (h), the Military Traffic Management Command had a name change. New name is Surface Deployment and Distribution Command (SDDC).

Councils' response: Concur. A change to the rule was made to show Military Surface Deployment and Distribution Command.

Comment 4: FAR 47.001, Definitions. Could you consider the term, Transportation Service Provider (TSP)? Since this is a term that GSA uses when referring to a "carrier".

Councils' response: Non-concur with using the term TSP for carrier. In the Federal Management Regulations, the term TSP was defined as "any party, person, agent or carrier that provides freight or passenger transportation, and related services to an agency." For a freight shipment this would include packers, truckers, and storers. For passenger transportation this would include airlines, travel agents and travel management centers. The Councils took exception to this proposed change because they felt the terms were not synonymous. The term "carrier" when referring to a provider of air, land, or sea transportation has a specific legal connotation attached to it when used together, *i.e.*, "air carrier" or "common carrier." Although using the term "transportation service provider," may appear to simplify the term, it actually distorts and increases confusion to the real purpose associated with the term "carrier."

Comment 5: Commenter opposes the proposed amendments that (i) they give the impression that federal agencies must use bills of lading and rate tenders in procuring household goods transportation and related services instead of FAR-based procedures; and (ii) they fail to state a preference for utilizing FAR-based procurements in the acquisition of household goods transportation and related services. Commenter suggests the following change in the first paragraph of this Background statement, line 14, change "that require" to "regarding the" after amendments.

Councils' Response: Non-Concur. The Councils are not prepared to state an opinion that one method of obtaining transportation services is preferable over another. Discretion on which method is most advantageous is left to the judgment of the contracting officer.

Comment 6: Commenter suggests the following in the fifth bullet of this Background statement:

"insert the following after shipments 'where transportation services are acquired through the use of bills of ladings, tariffs and rate tenders as opposed to FAR-based contracting methods.'"

Councils' Response: Non-Concur. The Councils are not prepared to state an opinion that one method of obtaining transportation services is preferable over another. Discretion on which method is most advantageous is left to the judgment of the contracting officer.

Comment 7: Commenter suggests the following in the sixth bullet of the Background statement in the preamble, line 3, insert "while" before "government rate tenders" and insert after "49 U.S.C 12102", "the use of FAR-based contracting methods and procedures is preferred."

Councils' Response: Non-concur. The Councils are not prepared to state an opinion that one method of obtaining transportation services is preferable over another. Discretion on which method is most advantageous is left to the judgment of the contracting officer.

Comment 8: Commenter suggests the following change to 47.000 Scope of Subpart (a)(2), (1) Line 10: insert the following after "49 U.S.C. 13712". "However, acquisition of transportation for household goods and related services should be accomplished through the FAR because of the benefits FAR-based procurements provide agencies over the use of "bills of lading."

Councils' Response: Non-concur. The Councils are not prepared to state an opinion that one method of obtaining transportation services is preferable over another. Discretion on which method is most advantageous is left to the judgment of the contracting officer.

Comment 9: Commenter suggests the following change to 47.000 Scope of Subpart (a)(2) Line 14: delete "this contract method is widely used and, therefore,"

Councils' Response: Non-concur. The Councils are not prepared to state an opinion that one method of obtaining transportation services is preferable over another. Discretion on which method is most advantageous is left to the judgment of the contracting officer.

Comment 10: 47.101 Policies paragraph (a) Line 1. Insert the following after domestic shipments, "where transportation services are acquired through the use of bills of ladings, tariffs and rate tenders as opposed to FAR-based contracting methods,"

Councils' Response: Non-Concur. No clarity added and is an incorrect/incomplete statement. Please note the CBL is the ordering document and can be used as such against any method, FAR or FAR-Exempt.

Comment 11: 47.101 Policies (b) Line 1. Insert the following before the "Where transportation services are acquired through the use of bills of ladings, tariffs and rate tenders as opposed to FAR-based contracting methods".

Councils' Response: Non-Concur. The Councils are not prepared to state an opinion that one method of obtaining transportation services is preferable over another. Discretion on which method is most advantageous is left to the judgment of the contracting officer.

Comment 12: The proposed rule says at 47.101 (a): "For domestic shipments, the contracting officer shall authorize shipments on commercial bills of lading (CBLs). Government bills of lading (GBLs) may be used for international or noncontiguous domestic trade shipments or when otherwise authorized." This requirement

continues throughout the coverage. DOD was mandated to use a data processing system called Power Track for transportations movements. Power Track is an automated system that provides all the necessary checks and balances occurring during a domestic transportation movement. Power Track does not provide or require the use of Commercial or Government Bills of Lading except for containerized and overseas shipments which in concurrence with Power Track utilize the Electronic Transportation Acquisition System (ETA). ETA produces a commercial Bill of Lading (BOL).

Commenter objects to the requirement to use BOLs for bulk domestic shipments. The documents have historically served three principal purposes: They are the carrier payment instrument, they document the shipment in terms of weight hauled by each carrier, and they satisfy the Hazardous Rules of the Department of Transportations (DOT) by carrying the Hazard Class and nomenclature. Commenter achieves all three purposes by using Power Track in concert with the Fuels Automated System (FAS). Additionally, commenter continues to use the required DD250 or DD1348 as is required.

At 47.103–1, the proposed coverage discusses the requirement to audit transportations services. Pre audit seems to be one of the objectives of the rule. Under Power Track, the issuing office and receiving office confirm matching deliveries prior to the request for any type of payment for all deliveries over $1600.00. This pre audit could be extended to lower value deliveries if necessary.

As discussed above, there are instances when Commercial Bills of Lading are used by the commenter. Containerized and overseas shipments utilize the Electronic Transportation Acquisition (ETA) systems which generates a CBL and forwards it to the contractor. This system will not be expanded to include the greatest portion of CONUS transportation requirements. Eventually, a COTS system will replace ETA and at that time, it is expected that it will become commenter's policy to issue CBLs for all shipments.

Councils' Response: The Councils recommend no action for this comment. The respondent objects to the requirement to use the Bill of Lading (BOL) for bulk domestic shipments, suggesting that Power Track is their preferred vehicle and that DoD has mandated the use of Power Track. There is no inconsistency between the proposed FAR language and the DoD mandate to employ Power Track. Specifically, Power Track is a financial system and does not negate the ability to use a BOL as the ordering document.

Comment 13: Clause 52.247–68 refers to explosives and poisons, classes A and B. In accordance with 49 CFR part 173 Transportation of Hazardous Materials: Paragraph 173.2, Subpart A, they are changed to Zones A, B, C or D based on their toxicity.

Councils' Response: Partially Concur. The Councils obtained further clarification from the Defense Energy Support Center (DESC) regarding the proposed change to the FAR clause at 52.247–68 that refers to explosives and poisons, classes A and B. In accordance with the CFR references noted above, classes A and B are replaced with classes 1, 2, and 6. Classes A and B are replaced with class 1, division 1.1, 1.2 and 1.3; class 2, division 2.3 and class 6, division 6.1. Previous classes A, B, and C refer to explosives and ammunition. Class A is 1.1 or 1.2; Class B is 1.2 or 1.3, Class C is 1.4. Poisons are Class 6 but also overlap with Class 2 gasses that can be explosive or poisonous. The gasses and poisons are limited to poisonous-by-inhalation (PIH) type.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only clarifies and updates the FAR coverage to reflect the latest changes of the referenced Federal Management Regulation and statutes that require use of commercial bills of lading for domestic shipments. Therefore, this rule will allow small businesses to use commercial practices in shipments thus eliminating the need for Government bills of lading on most transactions. Increasing the threshold for the submission of Transportation documents on cost reimbursement contracts to the agencies for audit from $50 to $100 decreases burden and offsets the increased burden of submission to agencies rather than a monthly submission to GSA.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 42, 46, 47, 52, and 53

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 42, 46, 47, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 42, 46, 47, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory paragraph by—

■ a. Removing FAR segment "42.14" and its corresponding OMB Control Number "9000–0056";

■ b. Adding, in numerical order, FAR segment "47.208" and its corresponding OMB Control Number "9000–0056";

■ c. Removing FAR segment "52.242–12" and its corresponding OMB Control Number "9000–0056"; and

■ d. Adding, in numerical order, FAR segment "52.247–68" and its corresponding OMB Control Number "9000–0056".

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 42.14—[Removed]

■ 3. Remove and reserve Subpart 42.14.

PART 46—QUALITY ASSURANCE

46.314 [Amended]

■ 4. Amend section 46.314 by removing "49 U.S.C. 10721(b)(1)" and adding "49 U.S.C. 10721 or 13712" in its place.

PART 47—TRANSPORTATION

■ 5. Amend section 47.000 by revising paragraph (a)(2) to read as follows:

47.000 Scope of subpart.

(a) * * *

(2) Acquiring transportation or transportation-related services by contract methods other than bills of

lading, transportation requests, transportation warrants, and similar transportation forms. Transportation and transportation services can be obtained by acquisition subject to the FAR or by acquisition under 49 U.S.C. 10721 or 49 U.S.C. 13712. Even though the FAR does not regulate the acquisition of transportation or transportation-related services when the bill of lading is the contract, this contract method is widely used and, therefore, relevant guidance on the use of the bill of lading is provided in this part (see 47.104).

* * * * *

■ 6. Amend section 47.001 by adding, in alphabetical order, the definitions "Bill of lading", "Government rate tender", "Household goods", "Noncontiguous domestic trade", and "Released or declared value" to read as follows:

47.001 Definitions.

* * * * *

Bill of lading means a transportation document, used as a receipt of goods, as documentary evidence of title, for clearing customs, and generally used as a contract of carriage.

(1) *Commercial bill of lading (CBL)*, unlike the Government bill of lading, is not an accountable transportation document.

(2) *Government bill of lading (GBL)* is an accountable transportation document, authorized and prepared by a Government official.

* * * * *

Government rate tender under 49 U.S.C. 10721 and 13712 means an offer by a common carrier to the United States at a rate below the regulated rate offered to the general public.

Household goods in accordance with 49 U.S.C. 13102 means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is arranged and paid for by—

(1) The householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder; or

(2) Another party.

Noncontiguous domestic trade means transportation (except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste) subject to regulation by the Surface Transportation Board involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States (see 49 U.S.C. 13102(15) and 13702).

Released or declared value means the assigned value of the cargo for reimbursement purposes, not necessarily the actual value of the cargo. Released value may be more or less than the actual value of the cargo. The released value is the maximum amount that could be recovered by the agency in the event of loss or damage for the shipments of freight and household goods.

■ 7. Revise section 47.002 to read as follows:

47.002 Applicability.

All Government personnel concerned with the following activities shall follow the regulations in Part 47 as applicable:

(a) Acquisition of supplies.

(b) Acquisition of transportation and transportation-related services.

(c) Transportation assistance and traffic management.

(d) Administration of transportation contracts, transportation-related services, and other contracts that involve transportation.

(e) The making and administration of contracts under which payments are made from Government funds for—

(1) The transportation of supplies;

(2) Transportation-related services; or

(3) Transportation of contractor personnel and their personal belongings.

■ 8. Amend section 47.101 by—

■ a. Redesignating paragraphs (a), (b), (c), (d), and (e) as (c), (d), (e), (f), and (g), respectively; and adding new paragraphs (a), (b), and (h); and

■ b. Amending newly designated paragraph (d)(2) introductory text by removing "subparagraph (b)(1) above" and adding "paragraph (d)(1) of this section" in its place.

■ The added text reads as follows:

47.101 Policies.

(a) For domestic shipments, the contracting officer shall authorize shipments on commercial bills of lading (CBL's). Government bills of lading (GBL's) may be used for international or noncontiguous domestic trade shipments or when otherwise authorized.

(b) The contract administration office (CAO) shall ensure that instructions to contractors result in the most efficient and economical use of transportation services and equipment. Transportation personnel will assist and provide transportation management expertise to the CAO. Specific responsibilities and details on transportation management are located in the Federal Management Regulation at 41 CFR parts 102–117 and 102–118. (For the Department of Defense, DoD 4500.9–R, Defense Transportation Regulation.)

* * * * *

(h) When a contract specifies delivery of supplies f.o.b. origin with transportation costs to be paid by the Government, the contractor shall make shipments on bills of lading, or on other shipping documents prescribed by Military Surface Deployment and Distribution Command (SDDC) in the case of seavan containers, either at the direction of or furnished by the CAO or the appropriate agency transportation office.

47.102 [Amended]

■ 9. Amend section 47.102 in paragraph (b) by removing "31 CFR parts 261 and 262" and adding "31 CFR parts 361 and 362" in its place.

■ 10. Revise section 47.103 and add sections 47.103–1 and 47.103–2 to read as follows:

47.103 Transportation Payment and Audit Regulation.

47.103–1 General.

(a)(1) Regulations and procedures governing the bill of lading, documentation, payment, and audit of transportation services acquired by the United States Government are prescribed in 41 CFR part 102–118, Transportation Payment and Audit.

(2) For DoD shipments, corresponding guidance is in DoD 4500.9–R, Defense Transportation Regulation, Part II.

(b) Under 31 U.S.C. 3726, all agencies are required to establish a prepayment audit program. For details on the establishment of a prepayment audit, see 41 CFR part 102–118.

(c) The agency designated in paragraph (a)(3) of the clause at 52.247–67 shall forward original copies of paid freight bills/invoices, bills of lading, passenger coupons, and supporting documents as soon as possible following the end of the month, in one package for postpayment audit to the General Services Administration, ATTN: FBA, 1800 F Street, NW., Washington, DC 20405. The specified agency shall include the paid freight bills/invoices, bills of lading, passenger coupons, and supporting documents for first-tier subcontractors under a cost-reimbursement contract. If the inclusion of the paid freight bills/invoices, bills of lading, passenger coupons, and supporting documents for any subcontractor in the shipment is not practicable, the documents may be forwarded to GSA in a separate package.

(d) Any original transportation bills or other documents requested by GSA shall be forwarded promptly. The specified agency shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA.

(e) A statement prepared in duplicate by the specified agency shall accompany each shipment of transportation documents. GSA will acknowledge receipt of the shipment by signing and returning the copy of the statement. The statement shall show—

(1) The name and address of the specified agency;

(2) The contract number, including any alpha-numeric prefix identifying the contracting office;

(3) The name and address of the contracting office;

(4) The total number of bills submitted with the statement; and

(5) A listing of the respective amounts paid or, in lieu of such listing, an adding machine tape of the amounts paid showing the Contractor's voucher or check numbers.

47.103–2 Contract clause.

Complete and insert the clause at 52.247–67, Submission of Transportation Documents for Audit, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract or a first-tier cost-reimbursement subcontract thereunder will authorize reimbursement of transportation as a direct charge to the contract or subcontract.

■ 11. Revise sections 47.104 through 47.104–5 to read as follows:

47.104 Government rate tenders under sections 10721 and 13712 of the Interstate Commerce Act (49 U.S.C. 10721 and 13712).

(a) This section explains statutory authority for common carriers subject to the jurisdiction of the Surface Transportation Board (motor carrier, water carrier, freight forwarder, rail carrier) to offer to transport persons or property for the account of the United States without charge or at "a rate reduced from the applicable commercial rate." Reduced rates are offered in a Government rate tender. Additional information for civilian agencies is available in the Federal Management Regulation (41 CFR parts 102–117 and 102–118) and for DoD in the Defense Transportation Regulation (DoD 4500.9–R).

(b) Reduced rates offered in a Government rate tender are authorized for transportation provided by a rail carrier, for the movement of household goods, and for movement by or with a water carrier in noncontiguous domestic trade.

(1) For Government rate tenders submitted by a rail carrier, a rate reduced from the applicable commercial rate is a rate reduced from a rate regulated by the Surface Transportation Board.

(2) For Government rate tenders submitted for the movement of household goods, "a rate reduced from the applicable commercial rate" is a rate reduced from a rate contained in a published tariff subject to regulation by the Surface Transportation Board.

(3) For Government rate tenders submitted for movement by or with a water carrier in noncontiguous domestic trade, "a rate reduced from the applicable commercial rate" is a rate reduced from a rate contained in a published tariff required to be filed with the Surface Transportation Board.

47.104–1 Government rate tender procedures.

(a) 49 U.S.C. 10721 and 13712 rates are published in Government rate tenders and apply to shipments moving for the account of the Government on—

(1) Commercial bills of lading endorsed to show that total transportation charges are assignable to, and will be reimbursed by, the Government (see the clause at 52.247–1, Commercial Bill of Lading Notations); and

(2) Government bills of lading.

(b) Agencies may negotiate with carriers for additional or revised 49 U.S.C. 10721 and 13712 rates in appropriate situations. Only personnel authorized in agency procedures may carry out these negotiations. The following are examples of situations in which negotiations for additional or revised 49 U.S.C. 10721 and 13712 rates may be appropriate:

(1) Volume movements are expected.

(2) Shipments will be made on a recurring basis between designated places, and substantial savings in transportation costs appear possible even though a volume movement is not involved.

(3) Transit arrangements are feasible and advantageous to the Government.

47.104–2 Fixed-price contracts.

(a) *F.o.b. destination.* 49 U.S.C. 10721 and 13712 rates do not apply to shipments under fixed-price f.o.b. destination contracts (delivered price).

(b) *F.o.b. origin.* If it is advantageous to the Government, the contracting officer may occasionally require the contractor to prepay the freight charges to a specific destination. In such cases, the contractor shall use a commercial bill of lading and be reimbursed for the direct and actual transportation cost as a separate item in the invoice. The clause at 52.247–1, Commercial Bill of Lading Notations, will ensure that the Government in this type of arrangement obtains the benefit of 49 U.S.C. 10721 and 13712 rates.

47.104–3 Cost-reimbursement contracts.

(a) 49 U.S.C. 10721 and 13712 rates may be applied to shipments other than those made by the Government if the total benefit accrues to the Government, *i.e.*, the Government shall pay the charges or directly and completely reimburse the party that initially bears the freight charges. Therefore, 49 U.S.C. 10721 and 13712 rates may be used for shipments moving on commercial bills of lading in cost reimbursement contracts under which the transportation costs are direct and allowable costs under the cost principles of Part 31.

(b) 49 U.S.C. 10721 and 13712 rates may be applied to the movement of household goods and personal effects of contractor employees who are relocated for the convenience and at the direction of the Government and whose total transportation costs are reimbursed by the Government.

(c) The clause at 52.247–1, Commercial Bill of Lading Notations, will ensure that the Government receives the benefit of lower 49 U.S.C. 10721 and 13712 rates in cost-reimbursement contracts as described in paragraphs (a) and (b) of this section.

(d) Contracting officers shall—

(1) Include in contracts a statement requiring the contractor to use carriers that offer acceptable service at reduced rates if available; and

(2) Ensure that contractors receive the name and location of the transportation officer designated to furnish support and guidance when using Government rate tenders.

(e) The transportation office shall—

(1) Advise and assist contracting officers and contractors; and

(2) Make available to contractors the names of carriers that provide service under 49 U.S.C. 10721 and 13712 rates, cite applicable rate tenders, and advise contractors of the statement that must be shown on the carrier's commercial bill of lading (see the clause at 52.247–1, Commercial Bill of Lading Notations).

47.104–4 Contract clause.

(a) In order to ensure the application of 49 U.S.C. 10721 and 13712 rates, where authorized (see 47.104(b)), insert the clause at 52.247–1, Commercial Bill of Lading Notations, in solicitations and contracts when the contracts will be—

(1) Cost-reimbursement contracts, including those that may involve the

movement of household goods (see 47.104–3(b)); or

(2) Fixed-price f.o.b. origin contracts (other than contracts at or below the simplified acquisition threshold) (see 47.104–2(b) and 47.104–3).

(b) The contracting officer may insert the clause at 52.247–1, Commercial Bill of Lading Notations, in solicitations and contracts made at or below the simplified acquisition threshold when it is contemplated that the delivery terms will be f.o.b. origin.

47.104–5 Citation of Government rate tenders.

When 49 U.S.C. 10721 and 13712 rates apply, transportation offices or contractors, as appropriate, shall identify the applicable Government rate tender by endorsement on bills of lading.

■ 12. Amend section 47.105 by revising the last sentence of paragraph (b) to read as follows:

47.105 Transportation assistance.

* * * * *

(b) * * * Military transportation offices shall request needed additional aid from the Military Surface Deployment and Distribution Command (SDDC).

■ 13. Amend section 47.200 by revising paragraphs (b)(3), (d), and (e) to read as follows:

47.200 Scope of subpart.

* * * * *

(b) * * *

(3) Household goods for which rates are negotiated under 49 U.S.C. 10721 and 13712. (These statutes do not apply in intrastate moves); or

* * * * *

(d) The procedures in this subpart are applicable to the transportation of household goods of persons being relocated at Government expense except when acquired—

(1) Under the commuted rate schedules as required in the Federal Travel Regulation (41 CFR Chapter 302);

(2) By DoD under the DoD 4500.9–R, Defense Transportation Regulation; or

(3) Under 49 U.S.C. 10721 and 13712 rates. (These statutes do not apply in intrastate moves.)

(e) Additional guidance for DoD acquisition of freight and passenger transportation is in the Defense Transportation Regulation.

47.201 [Amended]

■ 14. Amend section 47.201 by removing the definition "Household goods".

47.203 [Removed]

■ 15. Remove and reserve section 47.203.

47.207–7 [Amended]

■ 16. Amend section 47.207–7 by removing from paragraph (b) "11707" (twice) and adding "11706" in its place.

■ 17. Amend section 47.207–9 by revising the last sentence of paragraph (a) to read as follows:

47.207–9 Annotation and distribution of shipping and billing documents.

(a) * * * See 41 CFR part 102–118, Transportation Payment and Audit.

* * * * *

■ 18. Add sections 47.207–10 and 47.207–11 to read as follows:

47.207–10 Discrepancies incident to shipments.

Discrepancies incident to shipment include overage, shortage, loss, damage, and other discrepancies between the quantity and/or condition of supplies received from commercial carrier and the quantity and/or condition of these supplies as shown on the covering bill of lading or other transportation document. Regulations and procedures for reporting and adjusting discrepancies in Government shipments are in 41 CFR parts 102–117 and 118. (For the Department of Defense (DoD), see DoD 4500.9–R, Defense Transportation Regulation, Part II, Chapter 210).

47.207–11 Volume movements within the contiguous United States.

(a) For purposes of contract administration, a volume movement is—

(1) In DoD, the aggregate of freight shipments amounting to or exceeding 25 carloads, 25 truckloads, or 500,000 pounds, to move during the contract period from one origin point for delivery to one destination point or area; and

(2) In civilian agencies, 50 short tons (100,000 pounds) in the aggregate to move during the contract period from one origin point for delivery to one destination point or area.

(b) Transportation personnel assigned to or supporting the CAO, or appropriate agency personnel, shall report planned and actual volume movements in accordance with agency regulations. DoD activities report to the Military Surface Deployment and Distribution Command (SDDC) under DoD 4500.9–R, Defense Transportation Regulation. Civilian agencies report to the local office of GSA's Office of Transportation (see *www.gsa.gov/transportation* (click on Transportation Management Zone Offices in left-hand column, then click on Transportation Management Zones under Contacts on right-hand column).

■ 19. Add sections 47.208 through 47.208–2 to read as follows:

47.208 Report of shipment (REPSHIP).

47.208–1 Advance notice.

Military (and as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of shipments en route from contractors' plants. Generally, this notification is required only for classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments. It facilitates arrangements for transportation control, labor, space, and use of materials handling equipment at destination. Also, timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges.

47.208–2 Contract clause.

The contracting officer shall insert the clause at 52.247–68, Report of Shipment (REPSHIP), in solicitations and contracts when advance notice of shipment is required for safety or security reasons, or where carload or truckload shipments will be made to DoD installations or, as required, to civilian agency facilities.

■ 20. Amend section 47.301–3 by—

■ a. Revising paragraph (a);

■ b. Removing from paragraph (b) "MILSTAMP" and adding "DoD 4500.9–R, Defense Transportation Regulation Part II" in its place; and

■ c. Revising paragraph (c)(1) to read as follows:

47.301–3 Using the Defense Transportation System (DTS).

(a) All military and civilian agencies shipping, or arranging for the acquisition and shipment by Government contractors, through the use of military-controlled transport or through military transshipment facilities shall follow Department of Defense (DoD) Regulation DoD 4500.9–R, Defense Transportation Regulation Part II. This establishes uniform procedures and documents for the generation, documentation, communication, and use of transportation information, thus providing the capability for control of shipments moving in the DTS. DoD 4500.9–R, Defense Transportation

Regulation Part II has been implemented on a world-wide basis.

* * * * *

(c) * * *

(1) Effect DoD 4500.9–R, Defense Transportation Regulation Part II documentation and movement control, including air or water terminal shipment clearances; and

* * * * *

■ 21. Amend section 47.303–1 by revising paragraphs (a)(4) and (b)(5)(v) to read as follows:

47.303–1 F.o.b. origin.

(a) * * *

(4) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372).

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., "This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

* * * * *

■ 22. Amend section 47.303–3 by revising paragraph (a)(1)(iv) to read as follows:

47.303–3 F.o.b. origin, freight allowed.

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

* * * * *

■ 23. Amend section 47.303–4 by revising paragraph (a)(1)(iv) to read as follows:

47.303–4 F.o.b. origin, freight prepaid.

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

* * * * *

■ 24. Amend section 47.303–5 by revising paragraph (a)(1)(iv); and in paragraph (c) by removing "The contracting officer shall insert" and adding "Insert" in its place. The revised text reads as follows:

47.303–5 F.o.b. origin, with differentials.

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

* * * * *

47.303–13 [Amended]

■ 25. Amend section 47.303–13 in paragraph (a) by removing "*C.&f. destination*" and adding "*C.&f. (cost & freight) destination*" in its place; and by removing from paragraph (c) "is c.&f. destination" and adding "is c.&f. (Cost & freight) destination" in its place.

47.303–14 [Amended]

■ 26. Amend section 47.303–14 in paragraph (a) by removing "*C.i.f. destination*" and adding "*C.i.f. (Cost, insurance, freight) destination*" in its place; and removing from paragraph (c) "C.i.f. Destination" and adding "C.i.f. (Cost, insurance, freight) Destination" in its place.

47.303–15 [Amended]

■ 27. Amend section 47.303–15 in paragraph (b)(3) by removing the word "Government".

47.305–3 [Amended]

■ 28. Amend section 47.305–3 in the first sentence of the introductory paragraph by removing ", and to 42.1404–2, where the use of bills of lading, parcel post, and indicia mail is prescribed".

47.305–6 [Amended]

■ 29. Amend section 47.305–6 by—

■ a. Removing from the introductory text of paragraph (a)(3) "*c.&f. destination*" and adding "*c.&f. (cost & freight) destination*" in its place;

■ b. Removing from the introductory text of paragraph (a)(4) "*c.i.f. destination*" and adding "*c.i.f. (cost, insurance, freight) destination*" in its place;

■ c. Removing from paragraph (f)(1)(i) "MILSTAMP" and adding "DoD 4500.9–R, Defense Transportation Regulation, Part II," in its place;

■ d. In paragraph (f)(1)(ii), revising the parenthetical to read "(see DoD 4500.9–R, Defense Transportation Regulation, Part II)"; and

■ e. Removing from paragraph (g) "(see MILSTAMP at 47.301–3)".

47.305–9 [Amended]

■ 30. Amend section 47.305–9 by removing from the first sentence of paragraph (a) "tariffs" and adding "the National Motor Freight Classification (NMFC) (for carriers) and the Uniform Freight Classification (UFC) (for rail)" in its place.

47.305–13 [Amended]

■ 31. Amend section 47.305–13 in paragraph (b)(3) by removing the last sentence.

47.504 [Amended]

■ 32. Amend section 47.504 in paragraph (a) by removing "of the Panama Canal Commission or".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 33. Amend section 52.212–5 by revising the date of clause to read "(FEB 2006)" and removing from paragraphs (b)(35)(i) and (e)(1)(vii) of the clause "(APR 2003)" and "46 U.S.C. Appx 1241" and adding "(FEB 2006)" and "46 U.S.C. Appx 1241(b)", respectively, in its place.

52.213–4 [Amended]

■ 34. Amend section 52.213–4 by—

■ a. By revising the date of clause to read "(FEB 2006)";

■ b. Removing from paragraph (a)(2)(vi) of the clause "(DEC 2004)" and adding "(FEB 2006)" in its place;

■ c. Removing from paragraph (b)(1)(xi) of the clause "(APR 2003)" and adding "(FEB 2006)" in its place; and

■ d. Removing from paragraph (b)(2)(iii) of the clause "(JUNE 1988)" and adding "(FEB 2006)" in its place.

52.242–10 [Removed]

52.242–11 [Removed]

52.242–12 [Removed]

■ 35. Remove and reserve sections 52.242–10, 52.242–11, and 52.242–12.

52.244–6 [Amended]

■ 36. Amend section 52.244–6 by—

■ a. By revising the date of clause to read "(FEB 2006)"; and

■ b. Removing from paragraph (c)(1)(vi) of the clause "(APR 2003)" and adding "(FEB 2006)" in its place.

52.246–14 [Amended]

■ 37. Amend section 52.246–14 by removing from the prescription"49 U.S.C. 1072(b)(1)" and adding "49 U.S.C. 10721 or 13712" in its place.

52.247–1 [Amended]

■ 38. Amend section 52.247–1 by revising the date of the clause to read "(FEB 2006)"; and by removing the word "If" from the introductory paragraph of the clause and adding "When" in its place.

52.247–3 [Amended]

■ 39. Amend section 52.247–3 by—

■ a. Revising the date of the clause to read "(FEB 2006)";

■ b. Removing from the end of paragraph (a) of the clause "Interstate Commerce Commission" and adding "Federal Motor Carrier Safety Administration" in its place; and

■ c. Removing from the second sentence of paragraph (b)(2) of the clause "(see 49 CFR 1048)" and adding "(see Subpart B of 49 CFR part 372)" in its place.

■ 40. Amend section 52.247–29 by revising the date of the clause and paragraphs (a)(4) and (b)(5)(v) to read as follows:

52.247–29 F.o.b. Origin.

* * * * *

F.O.B. ORIGIN (FEB 2006)

(a) * * *

(4) If stated in the solicitation, to any Government designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372).

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; *e.g.*, "*This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government*"; and

* * * * *

(End of clause)

■ 41. Amend section 52.247–30 by revising the date of the clause and paragraph (b)(5)(v) to read as follows:

52.247–30 F.o.b. Origin, Contractor's Facility.

* * * * *

F.O.B. ORIGIN, CONTRACTOR'S FACILITY (FEB 2006)

* * * * *

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for bills of lading; *e.g.*, "*This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government*"; and

* * * * *

(End of clause)

■ 42. Amend section 52.247–31 by revising the date of the clause and paragraphs (a)(1)(iv) and (b)(5)(v) to read as follows:

52.247–31 F.o.b. Origin, Freight Allowed.

* * * * *

F.O.B. ORIGIN, FREIGHT ALLOWED (FEB 2006)

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372; and

* * * * *

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; *e.g.*, "*This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government*"; and

* * * * *

(End of clause)

■ 43. Amend section 52.247–32 by revising the date of the clause and paragraph (a)(1)(iv); removing the word "commercial" from the first sentence of the introductory text of paragraph (b)(5); and revising paragraph (b)(5)(v) to read as follows:

52.247–32 F.o.b. Origin, Freight Prepaid.

* * * * *

F.O.B. ORIGIN, FREIGHT PREPAID (FEB 2006)

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

* * * * *

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for bills of lading; *e.g.*, "This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

* * * * *

(End of clause)

■ 44. Amend section 52.247–33 by revising the date of the clause and paragraphs (a)(1)(iv), (b)(5)(v), and the second sentence of (c)(2) to read as follows:

52.247–33 F.o.b. Origin, with Differentials.

* * * * *

F.O.B. ORIGIN, WITH DIFFERENTIALS (FEB 2006)

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

* * * * *

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for bills of lading; *e.g.*, "*This shipment is the property of, and the freight charges paid to the carrier will be reimbursed by, the Government*"; and

* * * * *

(c)(1) * * *

(2) * * * If, at the time of shipment, the Government specifies a mode of transportation, type of vehicle, or place of delivery for which the offeror has set forth a differential, the Contractor shall include the total of such differential costs (the applicable differential multiplied by the actual weight) as a separate reimbursable item on the Contractor's invoice for the supplies.

* * * * *

(End of clause)

52.247–38 [Amended]

■ 45. Amend section 52.247–38 by revising the date of the clause to read "(FEB 2006)"; and in paragraph (b)(2) of the clause by adding "or other transportation receipt" after the word "lading".

52.247–43 [Amended]

■ 46. Amend section 52.247–43 by revising the date of the clause to read "(FEB 2006)"; and removing from paragraph (b)(3) of the clause the word "Government".

52.247–51 [Amended]

■ 47. Amend section 52.247–51 by revising the date of Alternate I to read "(FEB 2006)"; and by removing from paragraph (a) "Military Traffic Management Command" and adding "Military Surface Deployment and Distribution Command (SDDC)" in its place.

■ 48. Amend section 52.247–52 by—

■ a. Revising the date of the clause;

■ b. Revising paragraphs (a)(3)(iv) and (a)(3)(v); and removing paragraph (a)(3)(vi);

■ c. Removing "MILSTAMP" from paragraph (f)(1) of the clause and adding "transportation responsibilities under DoD 4500.9–R, Defense Transportation Regulation," in its place; and

■ d. Removing the word "commercial" from paragraphs (h)(1) and (h)(2) of the clause.

■ The revised and added text reads as follows:

52.247–52 Clearance and Documentation Requirements—Shipments to DoD Air or Water Terminal Transshipment Points.

* * * * *

CLEARANCE AND DOCUMENTATION REQUIREMENTS—SHIPMENTS TO DOD AIR OR WATER TERMINAL TRANSSHIPMENT POINTS (FEB 2006)

* * * * *

(a) * * *

(3) * * *

(iv) Explosives, ammunition, poisons or other dangerous articles classified as class 1, division 1.1, 1.2, 1.3, 1.4; class 2, division 2.3; and class 6, division 6.1; or

(v) Radioactive material, as defined in 49 CFR 173.403, class 7.

* * * * *

52.247–64 [Amended]

■ 49. Amend section 52.247–64 by—

■ a. Revising the date of the clause to read "(FEB 2006)";

■ b. Removing from paragraph (e)(1) of the clause "of the Panama Canal Commission or";

■ c. Revising the date of Alternate II to read "(FEB 2006)"; and

■ d. Removing from paragraph (e)(1) of Alternate II "of the Panama Canal Commission or".

■ 50. Revise section 52.247–67 to read as follows:

52.247–67 Submission of Transportation Documents for Audit.

As prescribed in 47.103–2, insert the following clause:

SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (FEB 2006)

(a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid—

(1) By the Contractor under a cost-reimbursement contract; and

(2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding $100. Bills under $100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(c) Contractors shall submit the above referenced transportation documents to—

_____

_____

_____

[*To be filled in by Contracting Officer*]

(End of clause)

■ 51. Section 52.247–68 is added to read as follows:

52.247–68 Report of Shipment (REPSHIP).

As prescribed in 47.208–2, insert the following clause:

REPORT OF SHIPMENT (REPSHIP) (FEB 2006)

(a) *Definition. Domestic destination*, as used in this clause, means—

(1) A destination within the contiguous United States; or

(2) If shipment originates in Alaska or Hawaii, a destination in Alaska or Hawaii, respectively.

(b) Unless otherwise directed by the Contracting Officer, the Contractor shall—

(1) Send a prepaid notice of shipment to the consignee transportation officer—

(i) For all shipments of—

(A) Classified material, protected sensitive, and protected controlled material;

(B) Explosives and poisons, class 1, division 1.1, 1.2 and 1.3; class 2, division 2.3 and class 6, division 6.1;

(C) Radioactive materials requiring the use of a III bar label; or

(ii) When a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract, or private) for transportation to a domestic destination (other than a port for export);

(2) Transmits the notice by rapid means to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment; and

(3) Send, to the receiving transportation officer, the bill of lading or letter or other document containing the following information and prominently identified as a "Report of Shipment" or "REPSHIP FOR T.O."

REPSHIP FOR T.O. 81 JUN 01

TRANSPORTATION OFFICER

DEFENSE DEPOT, MEMPHIS, TN.

SHIPPED YOUR DEPOT 1981 JUN 1 540 CTNS MENS COTTON TROUSERS, 30,240 LB, 1782 CUBE, VIA XX-YY*

IN CAR NO. XX 123456**-BL***-C98000031****CONTRACT DLA_____ETA*****-JUNE 5 JONES & CO., JERSEY CITY, N.J.

*Name of rail carrier, trucker, or other carrier.

**Vehicle identification.

***Bill of lading.

****If not shipped by BL, identify lading document and state whether paid by contractor.

*****Estimated time of arrival.

(End of clause)

PART 53—FORMS

■ 52. Revise section 53.247 to read as follows:

53.247 Transportation (U.S. Commercial Bill of Lading).

The commercial bill of lading is the preferred document for the transportation of property, as specified in 47.101.

[FR Doc. 05–24546 Filed 12–30–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 7, and 52

[FAC 2005–07; FAR Case 2005–015; Item II]

RIN 9000–AK35

Federal Acquisition Regulation; Common Identification Standard for Contractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to address the contractor personal identification requirements in Homeland Security Presidential Directive (HSPD–12), "Policy for a Common Identification Standard for Federal Employees and Contractors," and Federal Information Processing Standards Publication (FIPS PUB) Number 201, "Personal Identity Verification (PIV) of Federal Employees and Contractors."

DATES: *Effective Date:* January 3, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before March 6, 2006 to be considered in the formulation of a final rule.

Applicability Date: This rule applies to solicitations and contracts issued or awarded on or after October 27, 2005. Contracts awarded before that date requiring contractors to have access to a Federally controlled facility or a Federal

information system must be modified by October 27, 2007, pursuant to FAR subpart 4.13 in accordance with agency implementation of FIPS PUB 201 and OMB guidance M–05–24.

ADDRESSES: Submit comments identified by FAC 2005–07, FAR case 2005–015, by any of the following methods:

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

• Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.

• E-mail: *farcase.2005–015@gsa.gov*. Include FAC 2005–07, FAR case 2005–015 in the subject line of the message.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–07, FAR case 2005–015, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–07, FAR case 2005–015. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Increasingly, contractors are required to have physical access to federally-controlled facilities and information systems in the performance of Government contracts. On August 27, 2004, in response to the general threat of unauthorized access to physical facilities and information systems, the President issued Homeland Security Presidential Directive (HSPD–12). The primary objectives of HSPD–12 are to establish a process to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy by establishing a mandatory, Governmentwide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors. In accordance with HSPD–12, the Secretary of Commerce issued on February 25, 2005, Federal Information Processing Standards Publication (FIPS PUB) 201, Personal Identity Verification of Federal Employees and Contractors, to establish a Governmentwide standard for secure and reliable forms of identification for Federal and contractor employees. FIPS PUB 201 is available at *http://www.csrc.nist.gov/publications/fips/fips201/FIPS–201–022505.pdf*. The associated Office of Management and Budget (OMB) guidance, M–05–24, dated August 5, 2005, can be found at *http://www.whitehouse.gov/omb/memoranda/fy2005/m05–24.pdf*.

In accordance with requirements in HSPD–12, by October 27, 2005, agencies must—

(a) Adopt and accredit a registration process consistent with the identity proofing, registration and accreditation requirements in section 2.2 of FIPS PUB 201 and associated guidance issued by the National Institute for Standards and Technology. This registration process applies to all new identity credentials issued to contractors;

(b) Begin the required identity proofing requirements for all current contractors that do not have a successfully adjudicated investigation (*i.e.*, completed National Agency Check with Written Inquires (NACI) or other Office of Personnel Management or National Security community investigation) on record. (By October 27, 2007, identity proofing should be verified and completed for all current contractors);

(c) Complete and receive notification of results of the FBI National Criminal History Check prior to credential issuance;

(d) Include language implementing the Standard in applicable solicitations and contracts that require contractors to have access to a federally-controlled facility or access to a Federal information system; and

(e) Complete the applicable privacy requirements listed in section 2.4 of FIPS PUB 201 and the OMB guidance M–05–24.

The rule amends the FAR by—

• Adding the definitions "Federal information system" and "Federally-controlled facilities" at FAR 2.101;

• Adding Subpart 4.13, Personal Identity Verification of Contractor Personnel, to implement FIPS PUB 201 and the associated OMB guidance;

• Modifying the security considerations in FAR 7.105(b)(17) to require the acquisition plan to address the agency's personal identity verification requirements for contractors when applicable;

• Adding FAR clause 52.204–9, Personal Identity Verification of Contractor Personnel, to require the contractor to comply with the personal identity verification process for all affected employees in accordance with agency procedures identified in the contract.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because all entities that hold contracts or wish to hold contracts that require their personnel to have access to Federally controlled facilities or information systems will be required to employ on Government contracts only employees who meet the standards for being credentialed and expend resources necessary to help employees fill out the forms for credentialing. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

INITIAL REGULATORY FLEXIBILITY ANALYSIS

FAR Case 2005–015

Common Identification Standard for Contractors

This Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603.

1. Description of the reasons why the action is being taken.

This proposed rule implements Homeland Security Presidential Directive (HSPD–12), "Policy for a Common Identification Standard for Federal Employees and Contractors." This directive requires agencies to adopt a Governmentwide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors. As required by the Directive, the Department of Commerce issued Federal Information Processing Standard Publication (FIPS PUB) 201. Consequently, the FAR must be revised to require solicitations and contracts include requirements that contractors who have access to federally-controlled facilities and information systems comply with the agency's personal identify verification process. Failure to take action would expose the Government to unacceptable risk of harm to employees and assets.

2. Succinct statement of the objectives of, and legal basis for, the rule.

This rule is being promulgated to ensure that Federal agencies consistently apply the requirements of HSPD–12 to Federal contracts. Consistency in an identification standard is cost effective and will improve the security of Government employees and assets.

FIPS PUB 201 states that the Personal Identity Verification (PIV) Registrar shall initiate a National Agency Check with Inquiries (NACI) on the applicant as required by Executive Order 10450. Any unfavorable results of the investigation shall be adjudicated to determine the suitability of the applicant for obtaining a PIV credential. When all of the requirements have been completed, the PIV Registrar notifies the sponsor and the designated PIV issuer that the applicant has been approved for the issuance of a PIV credential. Conversely, if any of the required steps are unsuccessful, the PIV Registrar shall send appropriate notifications to the same authorities.

3. Description of and, where feasible, estimate of the number of small entities to which the rule will apply.

This rule will apply to any contractor whose employees will have access to Federal facilities or information systems. A precise estimate of the number of small entities that fall within the rule is not currently feasible because it would include both contractors who perform in Government-owned space as well as those who perform in Government-leased space (including employees of the lessor and its contractors.)

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The rule does not directly require reporting, recordkeeping or other compliance requirements within the meaning of the Paperwork Reduction Act (PRA). The rule does require that any entity, including small businesses that will be performing a contract that requires its employees to have access to Federal facilities or information systems, submit information on their employees. Such information will include a personnel history for each employee having access to a Federal facility or information system for a period exceeding 6 months. Although the forms involved are similar to a standard application for employment that is used by many companies, it is envisioned that some employers, especially those using non-skilled or semi-skilled laborers, will need to help their employees complete the form. It is estimated that each applicant will spend approximately 30 minutes completing the form.

5. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the rule.

The Councils are unaware of any duplicative, overlapping or conflicting Federal rule. To the extent that there may be a duplicative, overlapping or conflicting Federal rule, the purpose of this rule is to establish a Federal standard that would eliminate such duplication, overlap or conflict.

6. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

There are no practical alternatives that will accomplish the objectives of HSPD–12.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 4, 7, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–07, FAR case 2005–015), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*Further, the OMB guidance, M–05–24, advises to collect information using only forms approved by OMB under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. ch. 35), where applicable. Departments and agencies are encouraged to use Standard Form 85, Office of Personnel Management Questionnaire for Non-Sensitive Positions (OMB No. 3206–0005), or the Standard Form 85P, Office of Personnel Management Questionnaire for Positions of Public Trust (OMB No. 3206–0005), when collecting information.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services Administration (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without opportunity for public comment. This action is necessary to implement HSPD–12 which directs agencies to require the use of identification by Federal employees and contractors that meets the Standard in gaining physical access to federally-controlled facilities and access to federally-controlled information systems no later than October 27, 2005. The issuance of this interim rule will not be the first time the public has seen and had a chance to comment on FIPS PUB 201 and HSPD–12. The Department of Commerce, National Institute of Standards and Technology, issued a draft of FIPS PUB 201 on November 23, 2004, with comments due by December 23, 2004. Also, OMB issued a notice of Draft Agency Implementation Guidance for HSPD–12 on April 8, 2005, with comments due by May 9, 2005. HSPD–12 requires the development and agency implementation of a mandatory Governmentwide standard for secure and reliable forms of identification for both Federal employees and contractors. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 4, 7, and 52

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 7, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 7, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definitions "Federal information system" and "Federally-controlled facilities" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Federal information system means an information system (44 U.S.C. 3502(8)) used or operated by a Federal agency, or a contractor or other organization on behalf of the agency.

Federally-controlled facilities means—

(1)(i) Federally-owned buildings or leased space, whether for single or multi-tenant occupancy, and its grounds and approaches, all or any portion of which is under the jurisdiction, custody or control of a department or agency;

(ii) Federally-controlled commercial space shared with non-government tenants. For example, if a department or agency leased the 10th floor of a commercial building, the Directive applies to the 10th floor only; and

(iii) Government-owned, contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(2) The term does not apply to educational institutions that conduct activities on behalf of departments or agencies or at which Federal employees are hosted unless specifically designated as such by the sponsoring department or agency.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

■ 3. Add Subpart 4.13, consisting of sections 4.1300 and 4.1301, to read as follows:

Subpart 4.13—Personal Identity Verification of Contractor Personnel

Sec.
4.1300 Policy.
4.1301 Contract clause.

4.1300 Policy.

(a) Agencies must follow Federal Information Processing Standards Publication (FIPS PUB) Number 201, "Personal Identity Verification of Federal Employees and Contractors," and the associated Office of Management and Budget (OMB) implementation guidance for personal identity verification for all affected contractor and subcontractor personnel when contract performance requires contractors to have physical access to a federally-controlled facility or access to a Federal information system.

(b) Agencies must include their implementation of FIPS PUB 201 and OMB guidance M–05–24, dated August 5, 2005, in solicitations and contracts that require the contractor to have physical access to a federally-controlled facility or access to a Federal information system.

(c) Agencies shall designate an official responsible for verifying contractor employee personal identity.

4.1301 Contract clause.

The contracting officer shall insert the clause at 52.204–9, Personal Identity Verification of Contractor Personnel, in solicitations and contracts when contract performance requires contractors to have physical access to a federally-controlled facility or access to a Federal information system.

PART 7—ACQUISITION PLANNING

■ 4. Amend section 7.105 by revising paragraph (b)(17) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(17) *Security considerations.* For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see Subpart 4.4). For information technology acquisitions, discuss how agency information security requirements will be met. For acquisitions requiring contractor physical access to a federally-controlled facility or access to a Federal information system, discuss how agency requirements for personal identity verification of contractors will be met (see Subpart 4.13).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 52.204–9 to read as follows:

52.204–9 Personal Identity Verification of Contractor Personnel.

As prescribed in 4.1301, insert the following clause:

PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2006)

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive–12 (HSPD–12), Office of Management and Budget (OMB) guidance M–05–24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have physical access to a federally-controlled facility or access to a Federal information system.

(End of clause)

[FR Doc. 05–24547 Filed 12–30–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 11, 12, 16, 37, and 39

[FAC 2005–07; FAR Case 2003–018; Item III]

RIN 9000–AK00

Federal Acquisition Regulation; Change to Performance-based Acquisition

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by changing the terms "performance-based contracting (PBC)" and "performance-based service contracting (PBSC)" to "performance-based acquisition (PBA)" throughout the FAR; adding applicable PBA definitions of "Performance Work Statement (PWS)" and "Statement of Objectives (SOO)" and describing their uses; clarifying the order of precedence for requirements; eliminating redundancy where found; modifying the regulation to broaden the scope of PBA and give agencies more flexibility in applying PBA methods to contracts and orders of varying complexity; and reducing the burden of force-fitting contracts and orders into PBA, when it is not appropriate. The title of the rule has also been changed to reflect the deletion of "service."

DATES: *Effective Date:* February 2, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–07, FAR case 2003–018. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 43712 on July 21, 2004, to which 15 commenters responded. In addition, three respondents submitted comments in response to FAR Case 2004–004, Incentive for Use of Performance-Based Contracting for Services, that the Councils determined are more relevant to this FAR case. The major changes to the proposed rule that resulted from the public comments and Council deliberations are:

(1) *FAR 2.101 Definitions.* REVISED the definition of PBA to clarify its meaning.

(2) *FAR 2.101 Definitions.* REVISED the definition of PWS to clarify its meaning.

(3) *FAR 2.101 Definitions.* REVISED the definition of SOO to clarify its meaning.

(4) *FAR 7.103(r) Agency-head responsibilities.* DELETED "and, therefore, fixed-price contracts" from the statement "For services, greater use of performance-based acquisition methods and, therefore, fixed-price contracts * * * should occur for follow-on acquisitions" because the Councils

believe the appropriate contract type is based on the level of risk and not the acquisition method.

(5) *FAR 11.101(a)(2) Order of precedence for requirements documents.* DELETED "or function" because the Councils concluded that the term "function" could be confused with "detailed design-oriented documents" at 11.101(a)(3) thus confusing the order of precedence for requirements documents.

(6) *FAR 16.505(a)(3) Ordering (IDIQ).* CHANGED "performance work statements must be used to the maximum extent practicable" to "performance-based acquisition methods must be used to the maximum extent practicable" since either a SOO or PWS can be used in the solicitation.

(7) *FAR 37.000 Scope of subpart.* ADDED "or orders" after "contracts" to clarify the Subpart applies to contracts and orders.

(8) *Various Subparts in Part 37.* CHANGED the terminology from "performance-based service acquisitions" to "performance-based acquisitions" since Part 37 only relates to service acquisitions.

(9) *FAR 37.102(e), Agency program officialsresponsibility.* ADDED a requirement that the agency program officials describe the need to be filled using performance-based acquisition methods to the maximum extent practicable to facilitate performance-based acquisitions.

(10) *FAR 37.601, Performance-based acquisitions.* General provisions as follows:

(a) REBASELINED the rule to the current baseline. Updated baseline used in the proposed rule to reflect the current FAR baseline.

(b) DELETED 37.601(a) of the proposed rule which stated the principal objectives of PBAs since the principal objectives are addressed in the definition.

(c) RELOCATED and revised the detailed provisions for performance standards to a new FAR section, 37.603, to permit expanded coverage. The Councils clarified the language to indicate that performance standards must be measurable and ADDED "method of assessing contractor performance" to the required elements of a PBA since the quality assurance surveillance plan is not a mandatory element and contractors should know how they will be assessed during contract performance.

(d) REVISED the performance incentives coverage to simply refer to the provisions at 16.402–2 since the only unique requirement for PBAs is the requirement that performance incentives correspond to the performance standards.

(11) *FAR 37.602, Performance work statements*:

(a) In paragraph (b) REVERTED back to the existing FAR coverage with minor modifications because the Councils believe the prior coverage correctly detailed the requirements.

(b) In paragraph (c), REVISED SOO coverage to clarify that the SOO is a solicitation document and that performance objectives are the required results.

(12) *FAR 37.603, Performance standards.* ADDED coverage to clarify that performance standards must be measurable and structured to permit assessment of the contractor's performance.

(13) *FAR 37.604, Quality Assurance:*

(a) RETITLED the section to Quality Assurance Surveillance Plans to be consistent with FAR terminology.

(b) REVISED the coverage to simply refer to Subpart 46.4 since the same requirements apply for PBAs.

(c) ADDED coverage to clarify that the Government prepares the quality assurance surveillance plan when the solicitation uses a PWS and that contractors may be required to submit a quality assurance surveillance plan when the solicitation uses a SOO.

(14) *FAR 37.602–3, Selection procedures.* DELETED the coverage since there are no unique requirements for PBAs.

(15) *FAR 37.602–4, Contract type.* DELETED the coverage since there are no unique requirements for selecting contract type for PBAs.

(16) *FAR 37.602–5, Follow-on and repetitive requirements.* DELETED the coverage since there are no unique requirements for PBAs.

The Councils made changes based on the belief that performance-based acquisitions share many of the features of non-performance-based acquisitions. Only those features that are unique to PBA are set forth in subpart 37.6. Features that are similar, such as the Government's ability to take deductions for poor performance or non-performance of contract requirements under the Inspections clause, were not included. Therefore, the absence of a specific authority in subpart 37.6 should not be construed as meaning that the authority does not exist under another part of the FAR.

Disposition of Public Comments

a. Definitions FAR 2.101.

Comment(s): Performance-Based Acquisition. One commenter said the definition of performance-based acquisitions is unclear, wordy and obscure and that the demand for "clear, specific, and objective terms with measurable outcomes" was especially troublesome. The same commenter also said the definition appears to encompass both supplies and services and asked if "structuring all aspects" means "describing service requirements." Another commenter said a performance-based service acquisition is a subset of performance-based acquisitions and recommended developing a separate definition for performance-based service acquisitions and deleting the last sentence from the definition of performance-based acquisitions. Another commenter recommended revising the definition to permit "objective or subjective terms" since 37.601(c)(2) clearly permits the use of subjective standards.

Disposition: The Councils revised the definition to state performance-based acquisition "means an acquisition structured around the results to be achieved as opposed to the manner by which the work is to be performed." The Councils note the performance-based acquisition definition does encompass both supplies and services; however, the Councils do not believe a separate definition for performance-based service acquisitions is needed and believe adding a definition for performance-based service acquisition would necessitate a new definition for performance-based supply acquisition with the only difference being one definition would say "service" and the other would say "supply."

Comment(s): Performance Work Statement (PWS). (a) One commenter recommended defining a PWS as "a statement of work that describes service requirements in terms of the results that the contractor must produce instead of the processes that it must use when performing." The same commenter also questioned the difference between technical, functional, and performance characteristics and said it will be hard to implement the requirement for "clarity, specificity, and objectivity" at the working level "especially for long term contracts (one year or longer)." Another commenter recommended defining a PWS as "a statement that identifies the agency's requirements in clear, specific, measurable, and objective terms that describe technical, functional, and performance characteristics" because many PWSs are vague and impossible to measure and the lack of measurable outcomes allows the Government to apply subjective judgment that may lead to unfair contractor penalties. Another commenter recommended changing the definition to specifically state that the

PWS is a type of SOW so that readers would understand that they are essentially the same type of document and replacing "objective terms that describe" with "that identifies the agency requirements in clear specific, outcome or results-based terms, and with specific deliverables and tasks identified". The same commenter also questioned how to "describe a requirement objectively."

Disposition: The Councils revised the definition to say "a statement of work for performance-based acquisitions that describes the required results in clear, specific, and objective terms with measurable outcomes." The Councils believe the results must be described in "clear, specific, and objective terms" to ensure both parties understand the requirements. The Councils also agree that the outcomes must be measurable and revised the rule at FAR 37.602–2 (now 37.603) to require that performance standards be measurable and structured in a way to permit assessment of the contractor's performance.

(b) One commenter said the "desired outcome and/or performance objectives" terminology at 37.601(d) for performance incentives was inconsistent with the definition of a performance work statement at 2.101.

Disposition: The Councils agree the terminology was inconsistent. Instead of revising the language, the Councils deleted that part of the coverage since performance incentives are covered at FAR 16.402–2. When performance incentives are used, the rule at 37.601(b)(3) requires that the performance incentives correspond to the performance standards set forth in the contract.

Comment(s): Statement of Objectives (SOO). One commenter said the proposed definition could lead requirements and contracting personnel to think that a contract need contain only a SOO instead of a PWS. Another commenter said the definition is so broad that it is meaningless. The same commenter questioned the meaning of "high-level" and recommended adding "as they relate to the instant procurement" after "key agency objectives."

Disposition: The Councils revised 37.602 to clarify that the SOO is a Government prepared document for use in a solicitation that will form the basis for a PWS.

Comment(s): Quality Assurance Surveillance Plans. One commenter recommended adding a definition for quality assurance surveillance plan to be consistent with the July 2003 Interagency Task Force on Performance-Based Service Acquisition.

Disposition: Quality assurance surveillance plans are clearly addressed in FAR 46.401. The Councils are not aware of any issues related to the requirements in FAR 46.401. As these same requirements apply to Part 37, the Councils do not believe a new definition is necessary.

b. Agency-head responsibilities, FAR 7.103(r).

Comment(s): Three commenters said the assumption at 7.103(r) that greater use of performance-based service acquisitions methods and, therefore, fixed-price contracts should occur for follow-on acquisition was incorrect since the determination of appropriate contract type is based on level of risk and not the acquisition method, *i.e.*, performance-based service acquisitions.

Disposition: The Councils agree the appropriate contract type is based on the level of risk and not the acquisition method and revised the rule accordingly.

Comment(s): One commenter asked what checks are in place to ensure that agency heads actually prescribe procedures for ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies.

Disposition: Issues of compliance with the FAR are beyond the scope of this rulemaking. The Councils note that the Government Accountability Office and other agency auditing functions (*e.g.*, DoD Inspector General) have responsibility for assessing agency compliance with the established regulations.

c. Content of written acquisition plans, FAR 7.105.

Comment(s): One commenter recommended revising the rule at FAR 7.105 to require an explanation of the agency's compliance with the order of precedence for requirement documents at Part 11.101(a).

Disposition: Contracting officers are required to document the choice of product or services description types used in the acquisition plan - see FAR 7.105(b)(6). Therefore, additional coverage is not needed.

Comment(s): One commenter said the requirement at FAR 7.105(b)(4)(i) to "provide rationale if a performance-based service acquisitions will not be used or if a performance-based service acquisitions is contemplated on other than a firm-fixed price basis" should be changed since determining the appropriate contract type is independent of the acquisition approach used.

Disposition: The Councils agree that determining contract type is independent of the acquisition method used; however, the Councils believe it is appropriate to document why performance-based acquisition methods and firm-fixed prices were not used given the statutory order of precedence reflected in FAR 37.102(a)(2). The Councils note that these provisions were not changed by this rule.

d. Describing agency needs, FAR 11.101. One commenter said the rule revised the order of precedence for requirements documents by elevating function-oriented documents above detailed design-oriented documents and other standards or specifications. The commenter also recommended adding example of PWS or SOO to clarify the performance and function-oriented documents.

Disposition: The Councils did not intend to change the order of precedence at FAR 11.101. The Councils added "function-oriented" to "performance-oriented" documents to attempt to differentiate between a PWS and a SOO. Based on this comment, and after further deliberation, the Councils concluded that the term "function" could be confused with "detailed design-oriented documents" thus potentially changing the order of precedence for requirements documents. To avoid further confusion, the Councils deleted the term "function-oriented." The Councils also added examples of what is meant by a "performance-oriented document."

e. Types of contracts, FAR 16.505. One commenter said the rule at FAR 16.505(a)(3) that requires performance work statements to be used to the maximum extent practicable contradicts the reason for defining the SOO in the FAR. Another commenter said the provision should say performance-based service acquisitions must be used to the maximum extent possible instead of PWS since both PWS and SOO are acceptable alternative methods for solicitations.

Disposition: The Councils agree "performance-based acquisitions" not "performance work statements" should be used to the maximum extent practical and the rule was revised accordingly.

f. Scope of Part 37. One commenter recommended revising the rule at FAR 37.000 to reflect a "preference" instead of a "requirement" for the use of performance-based service acquisitions to be consistent with the statutory provisions.

Disposition: The Councils believe "requiring" performance-based acquisition methods to the maximum

extent practicable has the same meaning as the statutory "preference" for performance-based acquisition. The Councils note the provisions discussed above were not changed by this rule.

g. Service contracts policy, FAR 37.102. One commenter recommended revising the rule at FAR 37.102(a)(1) to say "performance work statements and quality assurance surveillance plans" instead of "performance-based service acquisition methods" because the term "performance-based service acquisitions methods" is needlessly vague.

Disposition: While performance work statements and quality assurance surveillance plans are important elements of performance-based acquisitions, they are not the only elements, *e.g.* SOO, performance standards. The Councils believe it would be redundant to list all of the elements of performance-based acquisition each time the term is used.

h. Contracting officer responsibility FAR 37.102. One commenter recommend revising the rule at FAR 37.103(c) to clarify that the technical/program personnel initiating the procurement must provide input to the contracting officer to enable the contracting officer to ensure performance-based contracting is used to the maximum extent possible.

Disposition: DoD, GSA, and NASA agree that the program personnel initiating the procurement need to describe the need to be filled using performance-based acquisition methods and revised the rule accordingly. However, the Councils revised FAR 37.102(e) instead of FAR 37.103(c) as suggested by the commenter since agency program official responsibilities are described in FAR 37.102(e).

i. Scope of subpart for performance-based service acquisition, FAR 37.600. One commenter recommended revising the rule at FAR 37.600 to specify that the subpart is applicable to "delivery" orders as well as "task" orders since performance-based service acquisitions are not limited to service acquisitions.

Disposition: While performance-based acquisitions encompass both supplies and services, the provisions in Part 37 only relate to contracts for services. Therefore, a reference to "delivery" orders in Part 37 is inappropriate because "delivery" orders are used to acquire supplies see FAR 16.501–1. The rule at FAR 37.000 has been revised to indicate that FAR Part 37 applies to orders for services, as well as contracts.

j. General provisions for performance-based service acquisition, FAR 37.601.

Comment(s): One commenter recommended revising the language at FAR 37.601(a) of the proposed rule to say "describing the Government's requirements in terms of the results that the contractor must produce instead of the processes that it must use when performing" instead of "expressing the Government's needs in terms of required performance objectives and/or desired outcomes, rather than the method of performance."

Disposition: The Councils agree the requirements should be expressed in terms of the results the contractor is expected to achieve and revised the terminology throughout the rule.

Comment(s): One commenter said the rule ignores the provisions the Councils recently added to FAR 37.601(a) to implement Section 1431 of the Services Acquisition Reform Act of 2003 (SARA) which provided governmentwide authority to treat certain performance-based contracts or task orders for services as commercial items under certain circumstances.

Disposition: The commenter is addressing provisions the Councils added in FAR case 2004–004, Incentives for Use of Performance-Based Contracting for Services, which implemented sections 1431 and 1433 of the National Defense Authorization Act for Fiscal Year 2004. That rule reorganized the existing provision at FAR 37.601 into a new paragraph (a) and added a new paragraph (b) which references FAR 12.102(g) for the use of Part 12 procedures for performance-based contracting. The Councils acknowledge the proposed rule did not properly reflect the changes made by FAR case 2004–004. The Councils have revised the rule to reflect the provisions added in FAR case 2004–004 modified to reflect the revised terminology, *i.e.*, change performance-based contracting to performance-based acquisitions.

Comment(s): One commenter recommended changing the proposed rule at FAR 37.601(c)(1) to say a PBSA contract or order shall include "PWS or SOO."

Disposition: While solicitations can include either a PWS or a SOO, the resulting contract or order must include only a PWS. Therefore, the Councils did not revise the rule as recommended.

Comment(s): One commenter recommended replacing "measurable performance standards" with "clear performance standards." Another commenter recommended revising the rule to require use of commercial language and practices when establishing performance standards and measuring performance against standards. Another commenter suggested using the terms "quantitative" and "qualitative" in lieu of "objective" and "subjective" because the terms are more appropriate and less open to misinterpretation. Another commenter said the rule addressed the critical element of measurable performance standards but recommended additional provisions to require the standards to be practicable, reliable, and valid and where feasible, use customary commercial language and practices.

Disposition: Performance standards must be measurable to enable assessment of the services performed. The Councils agree the performance standards can be quantitative or qualitative but believes it is not necessary to say so. As to using customary commercial language and practices, the Councils believe customary commercial language and practices may not always fully satisfy the Government's needs. Therefore, the Councils did not mandate their use; however, the Councils note nothing in the rule precludes their use.

Comment(s): Performance incentives, FAR 37.601.(a) One commenter said the rule eliminates the link between performance and payment since incentives and disincentives are now optional which means contractors can be paid in full when performance is less than acceptable as long as the Government describes its requirements objectively. Another commenter said that "to have a PBSC without incentives is to render the whole concept of measuring performance meaningless – especially if by default the only available remedy for sub par performance is termination for default." The same commenter also said the rule should use "damages" instead of "negative incentives" because the term "negative incentives"implies penalties that are not necessarily proportionate to the damage done to the Government. Another commenter said the "Inspections of Services" clauses dating from 1984 and 1993 mandate negative incentives and the proposed rule suggests that negative incentives are optional.

Disposition: The requirements for using performance incentives for performance-based acquisitions are no different than those for any other acquisition method, *i.e.*, performance incentives should be used when the quality of performance is critical and the incentives will likely motivate the contractor's performance. As stated in FAR 16.402–2(a), the performance incentives should relate profit or fee to the results achieved by the contractor compared with the specified targets, *i.e.*, the performance standards in the contract. The Councils note that performance incentives relate the

amount of profit or fee payable under the contract to the contractor's performance, not the Government's actual "damages", and that the term "negative incentives" is used in the provisions at FAR 16.402–2(b). Performance incentives, when included in a contract, are in addition to the Governments rights under the Inspection of Services clause. The Councils revised the rule to clarify that performance incentives for performance-based service acquisitions are the same as performance incentives for non-performance-based contracts.

(b) One commenter said the rule should refer to FAR Subpart 16.4 if other types of incentive such as cost incentives apply and recommended clarifying that performance incentives are not always needed for performance-based service acquisitions contracts.

Disposition: Incentives other than performance incentives may be appropriate for performance-based service acquisitions and the rule does not preclude the use of those other incentives. The rule addresses performance incentives because the Councils believe it is necessary to ensure that, when used, the performance incentives are tied to the performance standards specified in the performance work statement. The Councils agree that performance incentives are not always appropriate for performance-based service acquisitions and notes that the rule does not mandate their use, *i.e.*, the rule says "if used."

Comment(s): One commenter applauded the change to remove the requirement for price or fee reduction since the "Inspection of Services" clause gives the Government adequate recourse.

Disposition: The Councils agree that price or fee reduction flows from the inspection, warranty, and other clauses and that additional coverage is not needed in Part 37.

k. Performance work statements and statements of objectives, FAR 37.602.

Comment(s): One commenter recommended a more complete description of the SOO to clarify that the resulting PWS is included in the contract. Another commenter recommended using the language in the proposed rule at FAR 37.602–1(c) as the definition of a SOO in FAR 2.101 because the language at FAR 37.602–1(c) is clearer and more detailed and meaningful.

Disposition: The Councils revised the rule to clarify that a SOO is only used in the solicitation and that the resulting contract must include a PWS. The Councils also revised the definition of SOO to clarify its meaning; however, the revised definition does not identify the elements of a SOO as suggested by the commenter because the Councils believe simply listing the elements would not adequately define the meaning of a SOO.

Comment(s): Another commenter recommended making the proposed coverage for performance work statements consistent with the definition at FAR 2.101 to avoid confusion.

Disposition: The final rule revises the wording of FAR 37.602(b) to emphasize that the purpose of the performance work statement is to express the results the Government desires.

Comment(s): One commenter said the Government is writing performance work statements with "100% of the time" as the target performance and the rule should address when 100 percent is appropriate, *e.g.*, for mission critical systems.

Disposition: Contracting officers and program personnel must have the flexibility to decide the appropriate level of performance based on the specifics of the acquisition. The Councils do not believe it is feasible or necessary to define when "100%" is the appropriate performance level.

Comment(s): One commenter said that while implied in the proposed rule at FAR 37.601(b) and 37.601(c), the rule does not specifically state that a PWS must be developed and incorporated into the contract or order when the solicitation includes a SOO.

Disposition: The Councils note that the proposed rule at FAR 37.601(c) and the final rule at FAR 37.601(b)(1) both require performance-based contracts, including orders, include a PWS; however, the final rule at FAR 37.602 clearly states that the SOO does not become part of the contract.

l. Quality assurance surveillance plans, FAR 37.604

Comment(s): One commenter recommended revising the rule to say quality assurance surveillance plans are internal government documents that should not be incorporated into contracts because the Government should not make its quality assurance plan contractually binding or disclose the plan to the contractor since unannounced inspections are often essential to sound quality assurance. Two other commenters recommended making quality assurance surveillance plans mandatory elements of performance-based acquisition. One of the commenters also said the rule does not clearly state whether or not quality assurance surveillance plans are required and questioned whether the quality assurance surveillance plans were required for non-performance-based acquisitions procurement.

Disposition: The Councils agree the FAR should not require inclusion of quality assurance surveillance plans in all performance-based acquisitions; however, the Councils believe there may be circumstances when it could be appropriate to include the quality assurance surveillance plans in the contract, *e.g.*, the quality assurance surveillance plans outlines the method of assessing contractor performance against the performance standards. The Councils note that nothing in the rule requires that the QASP be incorporated in the contract. While the Councils believe the FAR should not mandate inclusion of a quality assurance surveillance plans in all performance-based acquisitions, the Councils do believe all performance-based acquisitions should contain the method of assessing contractor performance against performance standards and the Councils revised the rule accordingly. Lastly, the Councils believe the quality assurance coverage in FAR Subpart 37.6 has led to significant confusion and notes that much of the quality assurance coverage in FAR Subpart 37.6 duplicates coverage in FAR Subpart 46.4, Government Contract Quality Assurance. As the same requirements apply to performance-based acquisitions, the Councils eliminated the duplicative coverage from FAR Subpart 37.6.

Comment(s): One commenter recommended replacing the term "desired outcomes" with "requirements" to be consistent with the definition of a performance work statement at FAR 2.101.

Disposition: The Councils agree the terminology was inconsistent with the performance work statement definition and the rule no longer uses the terminology.

Comment(s): One commenter recommended adding the responsibilities of the Government, including the responsibility to provide performance feedback to the contractor on a regular basis and in an objective fashion, to the rule.

Disposition: The Councils believe Government personnel notify contractors when they believe the contractors are not meeting the contract quality requirements in the contract; however, the contractor, not the Government, is responsible for meeting the contract quality requirements. As with any acquisition, the level of contract quality requirements and Government contract quality assurance surveillance will vary based on the

particular acquisition. In some cases, the quality assurance surveillance may be limited to inspection at time of acceptance.

Comment(s): One commenter recommended changing the title of FAR 37.602–2 from "Quality Assurance" to "Quality Assurance Surveillance Plan" (QASP) to be consistent with the "Seven Steps Guide" or changing the title to "Performance Management Plan" or "Performance-Based Management Plan" to ensure the plans do not become checklists to measure performance.

Disposition: The Councils renamed the section of the rule to "Quality Assurance Surveillance Plan" to be consistent with FAR terminology. The Councils do not understand how changing the title would ensure that the plans were not used as checklists.

m. Selection procedures, FAR 37.602–3. One commenter said requiring agencies to use competitive negotiations when appropriate suggests that competitive negotiations is better than other contracting methods when it comes to obtaining best value which seems to be inconsistent with the definition of best value in FAR 2.101 and 6.401(b).

Disposition: The Councils agree the rule was inconsistent with the definition of best value and the provisions at FAR 6.401 that permit use of competitive proposals when sealed bids are not appropriate. The Councils deleted the provisions at FAR 37.602–3 because they believe the competition requirements and best value are adequately addressed in FAR 6.401(b) and 2.101, respectively.

n. Contract type and follow-on and repetitive requirements, FAR 37.602–4 and 37.602–5. One commenter said assuming that services that can be "defined objectively" lend themselves more readily to fixed pricing than other services, has no basis in contracting fact or theory. Another commenter recommended deleting the first sentence of the proposed FAR 37.602–4 because it is critical to continue to stress the importance of selecting a contract type that motivates a contractor to perform at optimal levels while complying with the order of precedence. Another commenter said contract type should not limit performance-based service acquisitions use. Another commenter said the proposed language at FAR 37.602–4 (Contract Type) and 37.602–5 (Follow-on and repetitive requirements) adds to the general misconception that fixed-price contracts or task orders go hand-in-hand with performance-based service acquisitions. The commenter recommended changing both references to say the type of contract or order issued should be appropriate for the type of work to be performed.

Disposition: The Councils agree that the rationale for selecting the appropriate contract type for performance-based acquisitions is no different than the rationale for selecting the appropriate contract type for non-performance-based acquisitions. Fixed-price contracts are appropriate when the risk involved is minimal or can be predicted with an acceptable degree of certainty and a reasonable basis for firm pricing exists. While recognizing the statutory order of precedence at FAR 37.102(a)(2), nothing in the statutory order of precedence changes the rationale for selecting contract type. To avoid further confusion, the Councils eliminated the coverage from Subpart 37.6.

o. General.

Comment(s): One commenter expressed concern that the September 7, 2004, Office of Federal Procurement Policy(OFFP) memorandum, entitled "Increasing the Use of Performance-Based Service Acquisition," rescinded the 1998 OFPP "Guide to Best Practices for Performance-Based Service Contracting" without any suitable replacement. The commenter said the Seven Steps to PBSA Guide does not provide sufficient guidance to meet the demonstrated needs of the agencies and entire acquisition community. The commenter hopes the Services Contracting Center of Excellence required by the SARA will provide meaningful information to assist Federal agencies with their performance-based service acquisitions efforts.

Disposition: The OFPP memorandum, guide, and Acquisition Center of Excellence for Service Contracting are beyond the scope of the Councils. They note OFPP is working with an interagency team to incorporate current policy, regulations, and vetted samples into the Government-wide PBSA guide, Seven Steps to PBSA. The Councils sent this recommendation to OFPP for its consideration.

Comment(s): One commenter recommended repealing the term "performance-based contracting" because the rule does not clearly override the current FAR terminology.

Disposition: As detailed in the summary of the proposed rule in the **Federal Register**, the Councils are changing the term from "performance-based contracting" to "performance-based acquisition." Additionally, once the final rule is published, the FAR will no longer have a definition for performance-based contracting.

Comment(s): One commenter said that performance-based acquisitions is broader than PBSC and could be used for more innovative ways of procurement but just changing the name will not get people to do more performance-based work. Another commenter said the proposed rule is a strong and needed step toward clarifying actions and responsibilities, especially in addressing definitions and acquisition planning. Another commenter commends the Councils on this proposed guidance particularly on the encouragement of fixed-price contracts.

Disposition: The Councils agree that simply changing the name will not increase the use of performance-based acquisition; however, the rule also clarifies performance-based terms and elements. The Councils intend these clarifications to help increase the use of performance-based acquisition. Also, they revised the rule to clarify that the rationale for determining contract type is no different for performance-based acquisition than any other acquisition. While the Councils encourage the use of fixed-price contracts whenever appropriate, the Councils do not encourage the use of fixed-price contracts when it is not appropriate (*i.e.*, too much risk or no reasonable basis for firm pricing).

Comment(s): One commenter said the rule should contain a strong statement to emphasize that performance-based contracting requires an end product or service that can be measured and that labor hour instruments are level-of-effort contracts with no definite deliverable.

Disposition: By definition, all contracts require delivery of supplies or performance of services. The deciding factor for performance-based acquisitions is whether or not the contract has measurable performance standards. The Councils believe that T&M/LH contracts can have measurable performance standards. Therefore, the rule does not preclude the use of T&M/LH contracts for performance-based acquisitions.

Comment(s): Two commenters recommended consistent use of "contract or order" throughout the entire proposed rule.

Disposition: The Councils do not believe it is necessary to state "or order" after each use of "contract," and to simplify the rule, the Councils identified orders in the Scope of part.

Comment(s): One commenter said use of the term "to the maximum extent practicable" is vague and will provide an easy way to avoid performance-based acquisitions.

Disposition: The Councils believe the term "to the maximum extent

practicable" provides Contracting Officers the appropriate flexibility to determine when performance-based acquisition methods should be used to fulfill the agency's requirements.

Comment(s): One commenter said the rule does not address performance plans which are highlighted in AFI 63–124. The commenter also said the rule addresses contractor assessment but fails to address contract assessment and oversight which is required in Public Law 107–107. The Air Force uses a performance plan to document both contract and contractor assessment. Suggest you address contract oversight in this section.

Disposition: The requirements of Section 801 of Public Law 107–107 are unique to DoD. DoD unique requirements are addressed in the Defense Federal Acquisition Regulations and are beyond the scope of this rule.

Comment(s): One commenter stated "low-bid contracting" is valuable for purchasing services in the context of fair pre-qualification requirements and that the rule does not clearly provide for the two-step process. The commenter requested the Councils clarify when low-bid would be appropriate for performance-based acquisitions.

Disposition: The Councils assume the commenter is referring to sealed bidding procedures. Under those procedures, "low-bid" is only appropriate when the award will be based on price and price-related factors.

p. The following comments were submitted under FAR case 2004–004, but pertain to this FAR case.

Comment(s): One commenter recommended changing the term "quality assurance" with "performance assessment" in FAR 37.601(a)(2) to be consistent with DoD's "Guidebook for Performance-Based Services Acquisitions."

Disposition: Quality assurance is the term consistently used throughout the FAR to monitor contractor performance and to ensure compliance with contract requirements. The instructions contained in the referenced Guidebook pertain only to the Department of Defense.

Comment(s): One commenter suggested that the Councils move the reference to quality assurance surveillance plans from FAR 37.601(a)(2) and make it a new subparagraph (5) to emphasize the importance of quality assurance surveillance plans.

Disposition: See paragraph l for the discussion of changes to the rule for quality assurance surveillance plans.

Comment(s): One commenter recommended changing the language in FAR 12.102(g)(1)(iv) to: "Includes appropriate quality assurance provisions (see 12.208)" instead of "includes a quality assurance surveillance plan."

Disposition: The Councils deleted the requirement to include a quality assurance surveillance plan in the contract to be consistent with provisions in Part 37.

Comment(s): One commenter recommended revisions to FAR 37.601(a) to provide for additional flexibility when using performance-based contracts for services.

Disposition: FAR 37.601(a) was revised to provide clarification to agencies and the acquisition community on the use of performance-based service acquisitions techniques.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any costs on either small or large businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 7, 11, 12, 16, 37, and 39

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 7, 11, 12, 16, 37, and 39 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 7, 11, 12, 16, 37, and 39 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by removing the definition "Performance-based contracting" and adding, in alphabetical order, the definitions "Performance-based acquisition (PBA)", "Performance Work Statement", and "Statement of Objectives (SOO)" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Performance-based acquisition (PBA) means an acquisition structured around the results to be achieved as opposed to the manner by which the work is to be performed.

Performance Work Statement (PWS) means a statement of work for performance-based acquisitions that describes the required results in clear, specific and objective terms with measurable outcomes.

* * * * *

Statement of Objectives (SOO) means a Government-prepared document incorporated into the solicitation that states the overall performance objectives. It is used in solicitations when the Government intends to provide the maximum flexibility to each offeror to propose an innovative approach.

* * * * *

PART 7—ACQUISITION PLANNING

■ 3. Amend section 7.103 by revising paragraph (r) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(r) Ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies. For services, greater use of performance-based acquisition methods should occur for follow-on acquisitions.

* * * * *

■ 4. Amend section 7.105 by—

■ a. Removing from the last sentence of the introductory text "contracting" and adding "acquisition" in its place;

■ b. Revising the last sentence in paragraph (b)(4)(i); and

■ c. Removing from paragraph (b)(6) "contracting" and adding "acquisition" in its place.

The revised text reads as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(4) *Acquisition considerations.*

(i) * * * Provide rationale if a performance-based acquisition

will not be used or if a performance-based acquisition for services is contemplated on other than a firm-fixed-price basis (see 37.102(a), 16.103(d), and 16.505(a)(3)).

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 5. Amend section 11.101 by revising paragraph (a)(2) to read as follows:

11.101 Order of precedence for requirements documents.

(a) * * *

(2) Performance-oriented documents (*e.g.*, a PWS or SOO). (See 2.101.)

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.102 [Amended]

■ 6. Amend section 12.102 in paragraph (g)(1)(iii) by removing "contracting" and adding "acquisition" in its place.

PART 16—TYPES OF CONTRACTS

■ 7. Amend section 16.505 by revising paragraph (a)(3) to read as follows:

16.505 Ordering.

(a) * * *

(3) Performance-based acquisition methods must be used to the maximum extent practicable, if the contract or order is for services (see 37.102(a) and Subpart 37.6).

* * * * *

PART 37—SERVICE CONTRACTING

■ 8. Amend section 37.000 by revising the second and third sentences to read as follows:

37.000 Scope of part.

* * * This part applies to all contracts and orders for services regardless of the contract type or kind of service being acquired. This part requires the use of performance-based acquisitions for services to the maximum extent practicable and prescribes policies and procedures for use of performance-based acquisition methods (see Subpart 37.6). * * *

■ 9. Amend section 37.102 by—

■ a. Removing from the first sentence of the introductory text of paragraph (a) "contracting" and adding "acquisition" in its place; and removing from the second sentence "contracts," and adding "contracts or orders," in its place;

■ b. Removing from paragraph (a)(1) "contracting" and adding "acquisition" in its place; and

■ c. Adding a sentence to the end of paragraph (e) to read as follows:

37.102 Policy.

* * * * *

(e) * * * To the maximum extent practicable, the program officials shall describe the need to be filled using performance-based acquisition methods.

* * * * *

37.103 [Amended]

■ 10. Amend section 37.103 by removing from paragraph (c) "contracting" and adding "acquisition" in its place.

■ 11. Revise Subpart 37.6 to read as follows:

Subpart 37.6—Performance-Based Acquisition

Sec.

37.600 Scope of subpart.
37.601 General.
37.602 Performance work statement.
37.603 Performance standards.
37.604 Quality assurance surveillance plans.

37.600 Scope of subpart.

This subpart prescribes policies and procedures for acquiring services using performance-based acquisition methods.

37.601 General.

(a) Solicitations may use either a performance work statement or a statement of objectives (see 37.602).

(b) Performance-based contracts for services shall include—

(1) A performance work statement (PWS);

(2) Measurable performance standards (*i.e.*, in terms of quality, timeliness, quantity, etc.) and the method of assessing contractor performance against performance standards; and

(3) Performance incentives where appropriate. When used, the performance incentives shall correspond to the performance standards set forth in the contract (see 16.402–2).

(c) See 12.102(g) for the use of Part 12 procedures for performance-based acquisitions.

37.602 Performance work statement.

(a) A Performance work statement (PWS) may be prepared by the Government or result from a Statement of objectives (SOO) prepared by the Government where the offeror proposes the PWS.

(b) Agencies shall, to the maximum extent practicable—

(1) Describe the work in terms of the required results rather than either "how" the work is to be accomplished or the number of hours to be provided (see 11.002(a)(2) and 11.101);

(2) Enable assessment of work performance against measurable performance standards;

(3) Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work.

(c) Offerors use the SOO to develop the PWS; however, the SOO does not become part of the contract. The SOO shall, at a minimum, include—

(1) Purpose;

(2) Scope or mission;

(3) Period and place of performance;

(4) Background;

(5) Performance objectives, *i.e.*, required results; and

(6) Any operating constraints.

37.603 Performance standards.

(a) Performance standards establish the performance level required by the Government to meet the contract requirements. The standards shall be measurable and structured to permit an assessment of the contractor's performance.

(b) When offerors propose performance standards in response to a SOO, agencies shall evaluate the proposed standards to determine if they meet agency needs.

37.604 Quality assurance surveillance plans.

Requirements for quality assurance and quality assurance surveillance plans are in Subpart 46.4. The Government may either prepare the quality assurance surveillance plan or require the offerors to submit a proposed quality assurance surveillance plan for the Government's consideration in development of the Government's plan.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

39.104 [Amended]

■ 12. Amend section 39.104 by removing from paragraph (b) "contract" and adding "acquisition" in its place.

[FR Doc. 05–24548 Filed 12–30–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 9, 12, 14, 17, 22, 25, and 52

[FAC 2005–07; FAR Case 2004–027; Item IV]

RIN 9000–AK09

Federal Acquisition Regulation; Free Trade Agreements—Australia and Morocco

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to convert the interim rule published in the **Federal Register** at 69 FR 77870, December 28, 2004, to a final rule with changes. This rule implemented new Free Trade Agreements with Australia and Morocco as approved by Congress (Public Laws 108–286 and 108–302). These Free Trade Agreements were scheduled to become effective on or after January 1, 2005. However, the Moroccan Free Trade Agreement has not yet been implemented and is therefore removed from this final rule.

The rule also established a table of services excluded from the coverage of the various trade agreements, corrected the threshold for Canadian services, revised the list of Least Developed Countries, revised FAR terminology relating to international trade agreements and the Trade Agreements Act (TAA), and revised the FAR clauses that implement application of the Buy American Act (41 U.S.C. 10a, 10b, 10b–1, and 10c) and trade agreements to construction material.

DATES: *Effective Date:* January 3, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Kimberly A. Marshall, Procurement Analyst, at (202) 219–0986. Please cite FAC 2005–07, FAR case 2004–027. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The 60-day comment period on the interim rule ended February 28, 2005. The Councils did not receive any public comments. However, the United States Trade Representative has informed the Councils that the Morocco Free Trade Agreement has not yet entered into force. Although the United States–Morocco Free Trade Agreement (Pub. L. 108–302) was enacted on August 17, 2004, entry into force on or after January 1, 2005, was conditioned on determination by the President that Morocco has taken certain measures necessary to bring it into compliance with certain provisions of the agreement. This determination has not been made, and implementation of the Morocco Free Trade Agreement is removed from this final rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up Government procurement to the products of Australia and Caribbean Basin country construction material, this will not have any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401–70, and acquisitions that are set aside for small businesses are exempt. The Councils did not receive any comments relating to the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000–0025, 9000–0130, and 9000–0141.

List of Subjects in 48 CFR Parts 5, 6, 9, 12, 14, 17, 22, 25, and 52

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Accordingly, the interim rule amending 48 CFR parts 5, 6, 9, 12, 14, 17, 22, 25, and 52 which was published at 69 FR 77870 on December 28, 2004, is adopted as a final rule with changes:

■ 1. The authority citation for 48 CFR parts 5, 6, 9, 12, 14, 17, 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

■ 2. Amend section 25.003, in paragraph (2) of the definition "Designated country" and "Free Trade Agreement country" by removing "Morocco,".

25.400 [Amended]

■ 3. Amend section 25.400 by—

■ a. Adding in paragraph (a)(2)(iii) the word "and" at the end of the paragraph;

■ b. Removing from the end of paragraph (a)(2)(iv) the word "and"; and

■ c. Removing paragraph (a)(2)(v).

25.401 [Amended]

■ 4. Amend section 25.401 in paragraph (b), in the table, in the sixth column, in the heading, by removing the text "and Morocco".

25.402 [Amended]

■ 5. Amend section 25.402 in paragraph (b), in the table, in the third row, by removing the entry "Morocco FTA" and its corresponding line items "175,000", "175,000", and "6,725,000".

25.1102 [Amended]

■ 6. Amend section 25.1102 by removing from paragraph (c)(3) ", Chilean, or Moroccan" and adding "or Chilean" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 7. Amend section 52.212–5 by revising the date of the clause to read "(JAN 2006)"; and by removing from paragraphs (b)(24)(i) and (b)(25) "(JAN 2005)" and adding "(JAN 2006)" in its place.

52.225–3 [Amended]

■ 8. Amend section 52.225–3 by revising the date of the clause to read "(JAN 2006)"; and in paragraph (c) by removing "(except the Morocco FTA)".

52.225–5 [Amended]

■ 9. Amend section 52.225–5 by revising the date of the clause to read "(JAN 2006)"; and in paragraph (a), in the definition "Designated country" by removing from paragraph (2) "Morocco,".

52.225–11 [Amended]

■ 10. Amend section 52.225–11 by—

■ a. Revising the date of the clause to read "(JAN 2006)";
■ b. In paragraph (a), in the definition "Designated country" by removing from paragraph (2) "Morocco,"; and
■ c. In Alternate I by—
■ 1. Revising the date of Alternate I to read "(JAN 2006)";
■ 2. Removing from the introductory paragraph ", Chilean, or Moroccan" and adding "or Chilean" in its place;
■ 3. Removing from the definition "Australian, Chilean, or Moroccan construction material" ", Chilean, or Moroccan" and adding "or Chilean" in its place; and in paragraphs (1) and (2) by removing ", Chile, or Morocco" and adding "or Chile" in its place; and
■ 4. Removing from paragraph (b)(1) "and Australian, Chilean, and Moroccan" and adding ", Australian or Chilean" in its place; and by removing from paragraph (b)(2) ", Chilean, or Moroccan" and adding "or Chilean" in its place.

52.225–12 [Amended]

■ 11. Amend section 52.225–12 by revising the date of Alternate II to read "(JAN 2006)"; and by removing from paragraphs (a), (d)(1) twice, and (d)(3) twice ", Chilean, or Moroccan" and adding "or Chilean" in its place.

[FR Doc. 05–24549 Filed 12–30–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 12, 19, and 52

[FAC 2005–07; FAR Case 2005–013; Item V]

RIN 9000–AK36

Federal Acquisition Regulation; Deletion of the Very Small Business Pilot Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to delete the Very Small Business Pilot Program. Under the pilot program, contracting officers were required to set-aside for very small business concerns certain acquisitions with an anticipated dollar value between $2,500 and $50,000. The Councils removed the FAR provisions because the legislative authority for the program terminated on September 30, 2003.

DATES: *Effective Date:* January 3, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2005–07, FAR case 2005–013. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Very Small Business Pilot Program was established by Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103–403). Very small business concern means a small business concern whose headquarters is located within the geographic area served by a designated SBA district and which, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed $1 million. The purpose of the program was to improve access to Government contract opportunities for concerns that were substantially below the Small Business Administration's size standards by reserving certain acquisitions for competition among such concerns. The Councils are removing the FAR provisions because the legislative authority for the program terminated on September 30, 2003.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

The Very Small Business Pilot Program was established by section 304 of Public Law 103–403, codified as a Note to the Small Business Act, "15 USC 644 Note" and was extended by Section 503 of Public Law 106–554 until September 30, 2003. The program has expired. Therefore, the Federal Acquisition Regulation is amended to reserve Subpart 19.9, Very Small Business Pilot Program, and delete other references to the program throughout the FAR. The changes will have an economic impact on a small number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the law required contracting officers to set-aside for very small business concerns acquisitions with an anticipated dollar value exceeding $2,500 but not greater than $50,000 if the contracting office is located within the geographical area served by a designated SBA district (for supplies), or in the case of an acquisition for services, the contract will be performed within the geographical area served by a designated SBA district; and there is a reasonable expectation of obtaining offers from two or more responsible very small business concerns in the designated areas.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 5, 12, 19, and 52

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 12, 19, and 52 as set forth below:
■ 1. The authority citation for 48 CFR parts 5, 12, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

5.207 [Amended]

■ 2. Amend section 5.207 by removing paragraph (c)(18) and redesignating paragraph (c)(19) as (c)(18); and by removing from paragraph (d) "very small business set-aside,".

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.303 [Amended]

■ 3. Amend section 12.303 by removing from paragraph (b)(1) ", or set-aside for very small business concerns".

PART 19—SMALL BUSINESS PROGRAMS

19.000 [Amended]

■ 4. Amend section 19.000 by removing from paragraph (a)(10) "The Very Small

Business Pilot Program;" and adding "[Reserved]" in its place.

19.001 [Amended]

■ 5. Amend section 19.001 by removing the definition "Very small business concern".

19.102 [Amended]

■ 6. Amend section 19.102 by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

19.502–2 [Amended]

■ 7. Amend section 19.502–2 by removing from the first sentence of paragraph (a) "Except for those acquisitions set aside for very small business concerns (see Subpart 19.9), each" and adding "Each" in its place.

Subpart 19.9—[Removed]

■ 8. Subpart 19.9 is removed and reserved.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(4) of the clause to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JAN 2006)

* * * * *

(b) * * *

(4) [Removed]

* * * * *

52.219–5 [Removed]

■ 10. Section 52.219–5 is removed and reserved.

[FR Doc. 05–24550 Filed 12–30–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 19, 25, 42, and 52

[FAC 2005–07; FAR Case 2003–023; Item VI]

RIN 9000–AJ91

Federal Acquisition Regulation; Purchases From Federal Prison Industries—Requirement for Market Research

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 637 of Division H of the Consolidated Appropriations Act, 2005. Section 637 provides that no funds made available under the Consolidated Appropriations Act for fiscal year 2005, or under any other Act for fiscal year 2005 and each fiscal year thereafter, shall be expended for purchase of a product or service offered by Federal Prison Industries, Inc., unless the agency making the purchase determines that the offered product or service provides the best value to the buying agency.

DATES: *Effective Date:* January 3, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. The TTY Federal Relay Number for further information is 1–800–877–8973. Please cite FAC 2005–07, FAR case 2003–023. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Section 637 of Division H of the Consolidated Appropriations Act, 2005 (Public Law 108–447) provides that none of the funds made available under that or any other Act for fiscal year 2005 and each fiscal year thereafter shall be expended for the purchase of a product or service offered by Federal Prison Industries, Inc. (FPI), unless the agency making the purchase determines that the offered product or service provides the best value to the buying agency pursuant to Governmentwide procurement regulations issued pursuant to 41 U.S.C. 421(c)(1) that impose procedures, standards, and limitations of 10 U.S.C. 2410n. Section 637 of Division F of the Consolidated Appropriations Act, 2004 (Public Law 108–199), contained a similar requirement that applied only to fiscal year 2004 funds.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 70 FR 18954, April 11, 2005, with a request for comments. Five respondents submitted comments. A discussion of the comments is provided below. As a result of comment 1 below, the final rule contains changes at FAR 8.602 to clarify that the requirements of the rule do not apply to items for which FPI has eliminated its mandatory source status.

1. *Comment:* In the preamble to the interim rule published on April 11, 2005, the response to Comment 3 states that, if an agency chooses to make a purchase at or below $2,500 from FPI, the agency must first conduct market research to comply with Section 637 of Public Law 108–447. This is inconsistent with the statement under SUPPLEMENTARY INFORMATION that FAR 8.602(b) (market research) does not apply to the purchase of any service or item of supply that FPI has been authorized by its Board of Directors to offer exclusively on a competitive (non-mandatory) basis. Since the FPI Board of Directors has eliminated its mandatory source status for purchases of $2,500 or less, it would logically follow that purchases from FPI up to $2,500 should also be exempt from market research requirements.

Councils' response: The Councils agree that the rule should provide equal treatment for all items for which FPI has eliminated its mandatory source status. The final rule amends FAR 8.602 to state that its procedures do not apply to the "non-mandatory" items identified in FAR 8.605(b)–(g). These items, therefore, will be acquired using the policies and procedures otherwise specified in the FAR.

2. *Comment:* There appears to be confusion as to whether the requirement for market research applies to services as well as supplies provided by FPI. This confusion stems from the inclusion of FPI as a mandatory source at FAR 8.002(a), which applies to both supplies and services.

Councils' response: FPI is not a mandatory source for services and, therefore, market research in accordance with FAR 8.602(b) is not required for services, as indicated at FAR 8.602(c). This is consistent with the order of

priorities at FAR 8.002(a)(2), which places FPI on an equal footing with commercial sources with regard to services. The policy at FAR 8.002(a)(1), which lists FPI as a mandatory source, applies only to supplies.

3. *Comment:* There may be a need in the future to provide more clarification of the definition of the term "comparability" and to further emphasize that the competitive solicitation process must occur after completion of the required comparability determination; and only in cases where FPI is deemed to be not comparable. FPI is still seeing instances where agencies are inappropriately combining comparability determinations with competitive procedures.

Councils' response: Further clarification of these issues is considered unnecessary at this time. However, as suggested by the respondent, the Councils will re-evaluate the need for clarification in the future if implementation problems persist.

4. *Comment:* While FAR 8.607 prohibits agencies from requiring a contractor to use FPI as a subcontractor, this language cannot be interpreted to circumvent an agency's obligation where a product made by FPI could be used in a project if it is deemed to be comparable. Regardless of whether the product is provided to the agency directly or indirectly, the same comparability determination and competitive procedures are required any time products offered for sale by FPI are purchased by or for Government agencies.

Councils' response: Do not agree that the comparability determination and competitive procedures of FAR 8.602(b) are required any time products offered for sale by FPI are purchased for the Government. 10 U.S.C. 2410n (e) specifically prohibits the Government from requiring a contractor to use FPI as a subcontractor or supplier. The rule is clear with regard to an agency's obligation when purchasing FPI products directly. Purchasing items through a prime contractor merely to circumvent the requirements of the rule clearly would be inappropriate. Therefore, it is the responsibility of the acquiring agency to ensure compliance with the requirements of the rule if the acquisition involves items of supply on FPI's Schedule.

5. *Comment:* FPI should not be permitted to participate in small business set-asides.

Councils' response: FPI may participate in small business set-asides in only those situations where an FPI "mandatory" item has been found to be non-comparable to private sector items and the subsequent competition is limited to FPI and small business concerns. This policy is actually intended to *increase* opportunities for small business concerns since (1) prior to this policy, FPI was the sole source provider of items that are now being acquired competitively; and (2) given the current statutory requirement to include FPI in the competition if an FPI item is determined to be non-comparable to private sector items, the alternative to FPI's participation in a small business set-aside would be an unrestricted (non-set-aside) competition that includes FPI.

6. *Comment:* In FAR 8.601(e), remove "and services" from the statement "Agencies are encouraged to purchase FPI supplies and services to the maximum extent practicable." FPI does not have mandatory source status for services, nor has it ever been given the statutory right to branch out into services.

Councils' response: The rule makes it clear that FPI is not a mandatory source for services. The statement at 8.601(e) is consistent with the policy previously included at FAR 8.602(b), which encouraged agencies to use the facilities of FPI to the maximum extent practicable in purchasing both supplies and services. This text was inadvertently excluded from the revision to FAR Subpart 8.6 published at 69 FR 16147 on March 26, 2004, and was reinstated in the interim rule published on April 11, 2005.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

The rule implements the Consolidated Appropriations Act, 2005, Division H, Section 637 (Public Law No: 108–447). The Act imposes the procedures, standards, and limitation of 10 U.S.C. 2410n on all federal agencies. 10 U.S.C. 2410n requires market research before purchasing a product listed in the Federal Prison Industries catalog, to determine whether the FPI product is comparable to products available from the private sector that best meet the agency's needs in terms of price, quality, and time of delivery. If the FPI product is not comparable, the agency must use competitive procedures to acquire the product or must make an individual purchase under a multiple award contract. In conducting such a competition or making such a purchase, the agency must consider a timely offer from FPI.

The rule is expected to benefit small business concerns that offer products comparable to those listed in the FPI catalog, by permitting those concerns to compete for federal contract awards. However, the rule could also have a negative impact on those small business concerns that supply goods or services to FPI.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8, 19, 25, 42, and 52

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Interim Rule Adopted as Final with Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 8, 19, 42, and 52, which was published in the **Federal Register** at 69 FR 16148, March 26, 2004, and the interim rule amending 48 CFR parts 8 and 25, which was published in the **Federal Register** at 70 FR 18954, April 11, 2005, as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 8, 19, 25, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Amend section 8.602 by—

■ a. Removing paragraph (a);

■ b. Redesignating paragraphs (b), (c), (d), and (e) as (a), (b), (c), and (d) respectively;

■ c. Revising the introductory text of the newlydesignated paragraph (a);

■ d. Revising the newly designated paragraph (b);

■ e. Removing from the newly designated paragraph (c)(2) "paragraph (b)" and adding "paragraph (a)" in its place; and

■ f. Removing from the newly designated paragraph (d) "paragraph

(b)(1)" and adding "paragraph (a)(1)" in its place.

■ The revised text reads as follows:

8.602 Policy.

(a) In accordance with 10 U.S.C. 2410n and Section 637 of Division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447), and except as provided in paragraph (b) of this section, agencies shall—

* * * * *

(b) The procedures in paragraph (a) of this section do not apply if an exception in 8.605(b) through (g) applies.

* * * * *

8.605 [Amended]

■ 3. Amend section 8.605 by removing from paragraph (a)(2) "8.602(b)(4)" and adding "8.602(a)(4)" in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.504 [Amended]

■ 4. Amend section 19.504 by removing "8.602(b)(4)" and adding "8.602(a)(4)" in its place.

[FR Doc. 05–24551 Filed 12–30–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 2005–07; FAR Case 2005–022; Item VII]

RIN 9000–AK34

Federal Acquisition Regulation; Exception from Buy American Act for Commercial Information Technology

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule to implement Section 517 of Division H, Title V of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447). Section 517 authorizes exemption from the Buy American Act for acquisitions of information technology that are commercial items.

DATES: *Effective Date:* January 3, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before March 6, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–07, FAR case 2005–022, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2005–022@gsa.gov*. Include FAC 2005–07, FAR case 2005–022, in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–07, FAR case 2005–022, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Kimberly Marshall, Procurement Analyst, at (202) 219–0986. Please cite FAC 2005–07, FAR case 2005–022.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends FAR 25.103 and FAR Subpart 25.11 to implement Section 517 of Division H, Title V of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447). Section 517 authorizes exemption from the Buy American Act for acquisitions of information technology that are commercial items. This applies only to the use of FY 2005 funds.

This same exemption appeared last year in section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004 (Pub. L. 108–199). The FY 04 exemption was implemented through deviations by the individual agencies.

The interim rule is based on the estimation that the exemption of commercial information technology is likely to continue. If the exception does not appear in a future appropriations act, a prompt change to the FAR will be made to limit applicability of the exemption to the fiscal years to which it applies.

The effect of this exemption is that the following clauses are no longer applicable in acquisition of commercial information technology:

- FAR 52.225–1, Buy American Act—Supplies.
- FAR 52.225–2, Buy American Act Certificate.
- FAR 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act.
- FAR 52.225–4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.

This is because the Buy American Act no longer applies; and the Free Trade Agreement non-discriminatory provisions are no longer necessary, since all products now are treated without the restrictions of the Buy American Act.

The Trade Agreements provision and clause at FAR 52.225–5 and FAR 52.225–6 are still necessary when the Trade Agreements Act applies (acquisitions above $175,000). The Trade Agreements provision and clause already waive applicability of the Buy American Act for eligible products, and are needed to implement the restrictions on procurement of noneligible end products. Section 535 and subsequent similar sections waived only the Buy American Act, not all restrictions on the purchase of foreign information technology.

"Information technology" and "Commercial item" are already defined in FAR Part 2.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule increases the exceptions to the Buy American Act to include the acquisitions of information technology that are commercial items. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

The objective of the interim rule is to add the exemption to the Buy American Act for acquisitions of commercial information technology. As a result of the additional exception, the Buy American Act will no longer apply to those acquisitions and the Free Trade Agreement non-discriminatory

provisions are no longer necessary, since all products will be treated without the restrictions of the Buy American Act. The interim rule applies to all offerors responding to solicitations for commercial information technology where the Buy American Act previously applied (generally, acquisitions between $2,500 and $175,000). This rule does not apply to the Department of Defense, which uses DFARS clauses to implement the Buy American Act. This exception will allow small entities to compete without meeting the Buy American Act domestic end product requirements.

• It is anticipated that small business concerns will continue to receive the same number of awards in the range of $2,500 to $100,000, because these awards are generally set-aside for small business concerns.

• It is also expected that small business concerns will continue to receive awards in the range of $100,000 to $175,000, but in this range they will face competition from foreign end products.

• This rule will not have an effect on small businesses affected by the "non-manufacturer rule" which means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern. If there is a small business set-aside, and there is no SBA waiver of the nonmanufacturer rule, then FAR 52.219–6(c) and/or FAR 52.219–18(d) require that a domestic product must be furnished. In this case, the rule will have no effect on small businesses because the nonmanufacturer rule is not changed.

• If SBA did waive the nonmanufacturer rule, then there is no requirement to purchase a domestic product but an evaluation preference would apply.

• The rule could have an impact on small businesses when there is no small business set-aside because small businesses may lose the evaluation preference for acquisitions between $25,000 and $175,000.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. We invite comments from small business concerns and other interested parties on this issue. The Councils will also consider comments from small entities concerning the affected FAR Part 25 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–07, FAR case 2005–022), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply because the changes to the FAR will slightly reduce the information collection requirements currently approved by the Office of Management and Budget OMB Clearances 9000–0024 and 9000–0130.

We estimate a reduction of approximately 5 percent (300 hours) for OMB Clearance 9000–0024 and a reduction of 50 hours to 9000–0130.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement the changes resulting from the enactment of Section 517 of Division H, Title V of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447), effective December 8, 2004. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 25 as set forth below:

PART 25—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 25.103 by adding paragraph (e) to read as follows:

25.103 Exceptions.

* * * * *

(e) *Information technology that is a commercial item.* The restriction on purchasing foreign end products does not apply to the acquisition of information technology that is a commercial item, when using fiscal year 2004 or subsequent fiscal year funds (Section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004, and similar sections in subsequent appropriations acts).

■ 3. Amend section 25.1101 by—

■ a. Revising paragraph (a)(1)(ii);

■ b. Amending paragraph (b)(1)(i)(A) by removing "and" from the end of the sentence;

■ c. Redesignating paragraph (b)(1)(i)(B) as (b)(1)(i)(C) and adding a new paragraph (b)(1)(i)(B) to read as follows:

25.1101 Acquisition of supplies.

* * * * *

(a)(1) * * *

(ii) The acquisition is for supplies for use within the United States and an exception to the Buy American Act applies (*e.g.*, nonavailability, public interest, or information technology that is a commercial item); or

* * * * *

(b)(1)(i) * * *

(B) The acquisition is not for information technology that is a commercial item, using fiscal year 2004 or subsequent fiscal year funds; and

* * * * *

[FR Doc. 05–24552 Filed 12–30–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–07; FAR Case 2005–026; Item VIII]

RIN 9000–AK37

Federal Acquisition Regulation; Removal of Sanctions Against Libya

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order 13357, which removed sanctions against Libya.

DATES: *Effective Date*: February 2, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Kimberly Marshall, Procurement Analyst, at (202) 219–0986. Please cite FAC 2005–07, FAR case 2005–026. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 25.7, Prohibited Sources, and the clause at 52.225–13, Restrictions on Certain Foreign Purchases, by removing Libya from the list of countries sanctioned by

the Department of the Treasury, Office of Foreign Assets Control (OFAC).

On September 20, 2004, the President signed Executive Order 13357 terminating the national emergency declared in Executive Order 12543 of January 7, 1986, with respect to the policies and actions of the Government of Libya and revoking that Order, as well as revoking Executive Order 12544 of January 8, 1986, and Executive Order 12801 of April 15, 1992, all of which imposed sanctions against Libya in response to the national emergency. This Executive Order 13357 also revoked Executive Order 12538 of November 15, 1985, which prohibited the importation into the United States of petroleum products refined in Libya. Upon issuance of Executive Order 13357, OFAC issued notice that the prohibitions of the Libyan Sanctions Regulations, 31 CFR part 550, would be lifted as of September 21, 2004. OFAC has confirmed that there are no more sanctions against Libya. At a later date, OFAC will add a note to the Libya Sanction Regulations (LSR) to notify the public that those regulations are no longer in effect. In their view, Executive Order 13357, their issuance of a press release, and a statement on their official website that the regulations lifted are sufficient authorization until they publish a notice in the **Federal Register**.

This final rule also makes conforming changes to the clause dates in the clauses at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders–Commercial Items, and 52.213–4, Terms and Conditions–Simplified Acquisition (Other than Commercial Items), and updates the OFAC websites.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 25 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–07, FAR case 2005–026), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

25.701 [Amended]

■ 2. Amend section 25.701 by removing from the first sentence of paragraph (b) "Libya,"; removing from the second sentence "*http://www.epls.gov/TerList1.html*" and adding "*http://www.treas.gov/offices/enforcement/ofac/sdn*" in its place; and removing from the third sentence "*http://www.treas.gov/ofac*" and adding "*http://www.treas.gov/offices/enforcement/ofac*" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 3. Amend section 52.212–5 by removing from the heading of the clause "(SEP 2005)" and adding "(FEB 2006)" in its place; and removing from paragraph (b)(26) of the clause "(MAR 2005)" and adding "(FEB 2006)" in its place.

52.213–4 [Amended]

■ 4. Amend section 52.213–4 by—

■ a. Removing from the heading of the clause "(JUL 2005)" and adding " (FEB 2006)"in its place; and

■ b. Removing from paragraph (a)(1)(iv) of the clause "(MAR 2005)" and adding "(FEB 2006)" in its place.

52.225–13 [Amended]

■ 5. Amend section 52.225–13 by—

■ a. Removing from the heading of the clause "(MAR 2005)" and adding "(FEB 2006) "in its place; and

■ b. Removing from the first sentence of paragraph (b) of the clause "Libya,"; removing from the second sentence "http://epls.arnet.gov/News.html" and adding "http://www.treas.gov/offices/enforcement/ofac/sdn" in its place; and removing from the third sentence "http://www.treas.gov/ofac" and adding "http://www.treas.gov/offices/enforcement/ofac" in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 44 and 52

[FAC 2005–07 FAR Case 2003–024, Item IX]

RIN 9000–AK39

Federal Acquisition Regulation; Elimination of Certain Subcontract Notification Requirements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to modify the language regarding advance notification requirements. This change is required to implement Section 842 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136, which resulted in revisions to 10 U.S.C. 2306(e).

DATES: *Effective Date:* January 3, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2005–07, FAR case 2003–024. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 70 FR 11761, March 9, 2005, with a request for comments by May 9, 2005. The interim rule revised FAR 44.201–2, Advance notification requirements, and amended Alternate I of FAR clause 52.244–2, Subcontracts. The change is required in order to implement Section 842 of the National Defense Authorization Act for Fiscal Year 2004,

Public Law 108–136. Section 842 removes the requirement for contractors under cost-reimbursement contracts with the Department of Defense (DoD), Coast Guard, and National Aeronautics and Space Administration (NASA) to notify the agency before the award of any cost-plus-fixed-fee subcontract or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract if the contractor maintains a purchasing system approved by the contracting officer for the contract.

The final rule differs from the interim rule in that it deletes Alternate I in its entirety. The Councils adopted the suggestion in a public comment that deletion of Alternate I would be a less confusing means of implementing the statute than amending Alternate I. Renumbering has occurred in FAR 44.204 and 52.244–2 as a result of the deletion of Alternate I.

In addition, the interim rule made a technical amendment to Alternate II of the FAR clause at 52.244–2, Subcontracts. The interim rule deleted the reference to paragraph (c) from paragraph (f)(2) of Alternate II (now renumbered Alternate I in the final rule) because paragraph (c) applies to fixed-price type contracts, whereas Alternate II (now renumbered Alternate I in the final rule) applies to cost-reimbursement contracts.

Two comments were received from one respondent.

Comment: The respondent noted that the purpose of the FAR change is, in the case of DoD, the Coast Guard, and NASA, to eliminate the requirement for the contractor to notify the agency before award of certain subcontracts when the contractor has an approved purchasing system. The respondent stated that the language in the interim rule is confusing and suggested eliminating Alternate I of 52.244–2 instead.

Response: Concur. The final rule deletes Alternate I.

Comment: The respondent suggested rewriting Alternate II of the FAR clause at 52.244–2 and FAR 44.201–2 to have the language match what is in 52.244–2(d)(1).

Response: Nonconcur. Paragraph (d)(1) of the FAR clause at 52.244–2 specifies the contract types—cost-reimbursement, time-and-materials, and labor-hour—subject to subcontract consent requirements. Alternate II specifies the contract types—cost-plus-fixed-fee and fixed-price—subject to advance notification requirements even when subcontract consent is not required. These two procedures are separate statutory requirements and apply to different contract types.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it will have a small positive effect. Small businesses do not usually hold prime contracts which are cost-reimbursement contracts, so this section would not apply to them, and any change would not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 44 and 52

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 44 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 44 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

■ 2. Amend section 44.204 by revising paragraph (a)(2) to read as follows:

44.204 Contract clauses.

(a)(1) * * *

(2) If a cost-reimbursement contract is contemplated, for civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, the contracting officer shall use the clause with its Alternate I.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.244–2 by—

■ a. Removing Alternate I; and

■ b. Redesignating Alternate II as Alternate I; and revising the introductory paragraph to read as follows:

52.244–2 Subcontracts.

* * * * *

Alternate I (JAN 2006). As prescribed in 44.204(a)(2), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

* * * * *

[FR Doc. 05–24554 Filed 12–30–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2005–07; FAR Case 2005–006; Item X]

RIN 9000–AK38

Federal Acquisition Regulation; Annual Representations and Certifications – NAICS Code/Size

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to modify the provision regarding Annual Representations and Certifications to include a section whereby the contracting officer can insert the appropriate North American Industry Classification System (NAICS) code and small business size standard for the procurement. Its exclusion in the original drafting of the subject provision was an oversight. When the FAR provision is included in a solicitation, the provision regarding Small Business Program Representations, where this information is normally placed, is not included. Without this change, there is no standard way in which the NAICS code and small business size standard can be communicated to the vendor.

DATES: *Effective Date:* January 3, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Gerald Zaffos at (202) 208–6091. The TTY Federal Relay Number for further information is 1–800–877–8973. Please cite FAC 2005–07, FAR case 2005–006. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The final rule amends the Federal Acquisition Regulation by modifying the provision at FAR 52.204–8 to include a new paragraph (a) that replicates the same paragraph of the provision at FAR 52.219–1(a).

Federal Acquisition Circular (FAC) 2001–026 made effective the use of the provision at FAR 52.204–8 for most procurements. The prescription for its use also directs that the provision at FAR 52.219–1(a) not be included in solicitations, as it is now included in the Online Representations and Certifications Application (ORCA). The FAR provision at 52.219–1(a), when it is included in solicitations, is the place wherein the contracting officer includes the NAICS code and small business size standard applicable to the procurement. There needs to be a similar paragraph available in FAR 52.204–8, the exclusion of which was an oversight in FAC 2001–026.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–07, FAR case 2005–006), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 52.204–8 by—

■ a. Revising the date of the provision;

■ b. Redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively;

■ c. Adding a new paragraph (a); and

■ d. Removing from newly designated paragraph (b)(1) and the introductory text of paragraph (b)(2) "paragraph (b)" and adding "paragraph (c)" in its place; and removing from newly redesignated (b)(2)(i) and (b)(2)(ii) "Paragraph (b)" and adding "Paragraph (c)" in its place.

■ The revised and added text reads as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

ANNUAL REPRESENTATIONS AND CERTIFICATIONS (JAN 2006)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is _____ [*insert NAICS code*].

(2) The small business size standard is _____ [*insert size standard*].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

* * * * *

[FR Doc. 05–24556 Filed 12–30–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 11, 25, 27, 34, 38, 39, 43, 46, 48, 50, and 52

[FAC 2005–07; Item XI]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial corrections and updates the Federal Acquisition Regulation's authority citation.

DATES: *Effective Date*: January 3, 2006.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–07, Technical Amendments.

List of Subjects in 48 CFR Parts 9, 11, 25, 27, 34, 38, 39, 43, 46, 48, 50, and 52

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 9, 11, 25, 27, 34, 38, 39, 43, 46, 48, 50, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 9, 11, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. The authority citation for 48 CFR parts 27, 34, 38, 39, 43, 46, 48, and 50 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

■ 3. Amend section 9.203 by revising paragraph (b)(2) to read as follows:

9.203 QPL's, QML's, and QBL's.

* * * * *

(b) * * *

(2) Department of Defense Acquisition Streamlining and Standardization

Information System (ASSIST) at (*http://assist.daps.dla.mil*).

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 4. Amend section 11.102 by revising the third and fourth sentences to read as follows:

11.102 Standardization program.

* * * DoD 4120.24–M may be obtained from DoD (see 11.201(d)(2) or 11.201(d)(3)). FIPS PUBS may be obtained from the Government Printing Office (GPO), or the Department of Commerce's National Technical Information Service (NTIS) (see address in 11.201(d)(4)).

■ 5. Amend section 11.201 by—

■ a. Removing from the first sentence of the introductory text of paragraph (a) "DoD Index of Specifications and Standards (DoDISS)" and adding "DoD Acquisition Streamlining and Standardization Information System (ASSIST)" in its place;

■ b. Removing from the first sentence of paragraph (b) "DoDISS" and adding "ASSIST" in its place; and

■ c. Revising paragraph (d)(2); redesignating paragraph (d)(3) as paragraph (d)(4), and adding a new paragraph (d)(3) to read as follows:

11.201 Identification and availability of specifications.

* * * * *

(d)(1) * * *

(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

(i) ASSIST (*http://assist.daps.dla.mil*).

(ii) Quick Search (*http://assist.daps.dla.mil/quicksearch*).

(iii) ASSISTdocs.com (*http://assistdocs.com*).

(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—

(i) Using the ASSIST Shopping Wizard (*http://assist.daps.dla.mil/wizard*);

(ii) Phoning the DoDSSP Customer Service Desk, (215) 697–2179, Mon-Fri, 0730 to 1600 EST; or

(iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, Telephone (215) 697–2667/2179, Facsimile (215) 697–1462.

* * * * *

■ 6. Amend section 11.204 by revising paragraph (b) to read as follows:

11.204 Solicitation provisions and contract clauses.

* * * * *

(b) The contracting officer shall insert the provision at 52.211–2, Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST), in solicitations that cite specifications listed in the ASSIST that are not furnished with the solicitation.

* * * * *

PART 25—FOREIGN ACQUISITION

25.1101 [Amended]

■ 7. Amend section 25.1101 in the second sentence of paragraph (e)(2) by removing "paragraphs (b)(1) and (i)(2)" and adding "paragraphs (c)(1) and (j)(2)" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Revise section 52.211–2 to read as follows:

52.211–2 Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST).

As prescribed in 11.204(b), insert the following provision:

AVAILABILITY OF SPECIFICATIONS, STANDARDS, AND DATA ITEM DESCRIPTIONS LISTED IN THE ACQUISITION STREAMLINING AND STANDARDIZATION INFORMATION SYSTEM (ASSIST) (JAN 2006)

(a) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

(1) ASSIST (*http://assist.daps.dla.mil*);

(2) Quick Search (*http://assist.daps.dla.mil/quicksearch*);

(3) ASSISTdocs.com (*http://assistdocs.com*).

(b) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—

(1) Using the ASSIST Shopping Wizard (*http://assist.daps.dla.mil/wizard*);

(2) Phoning the DoDSSP Customer Service Desk (215) 697–2179, Mon-Fri, 0730 to 1600 EST; or

(3) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, Telephone (215) 697–2667/2179, Facsimile (215) 697–1462.

(End of provision)

■ 9. Amend section 52.212–1 by revising the date and paragraph (i)(2) of the provision; redesignating paragraph (i)(3) as paragraph (i)(4); and adding a new paragraph (i)(3) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS (JAN 2006)

* * * * *

(i) * * *

(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

(i) ASSIST (*http://assist.daps.dla.mil*).

(ii) Quick Search (*http://assist.daps.dla.mil/quicksearch*).

(iii) ASSISTdocs.com (*http://assistdocs.com*).

(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—

(i) Using the ASSIST Shopping Wizard (*http://assist.daps.dla.mil/wizard*);

(ii) Phoning the DoDSSP Customer Service Desk (215) 697–2179, Mon-Fri, 0730 to 1600 EST; or

(iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, Telephone (215) 697–2667/2179, Facsimile (215) 697–1462.

* * * * *

[FR Doc. 05–24557 Filed 12–30–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National

Aeronautics and Space Administration. *This Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–07 which amend the FAR. An asterisk (*) next to a rule indicates that a Regulatory Flexibility Analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–07 which precedes this document. These documents are also available via the Internet at *http://www.acqnet.gov/far*.

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

List of Rules in FAC 2005–07

Item	Subject	FAR case	FAR Analyst
I	Transportation: Standard Industry Practices	2002–005	Parnell.
*II	Common Identification Standard for Contractors(Interim)	2005–015	Jackson.
III	Change to Performance–based Acquisition	2003–018	Jackson.
IV	Free Trade Agreements–Australia and Morocco	2004–027	Marshall.
*V	Deletion of the Very Small Business Pilot Program	2005–013	Cundiff.
*VI	Purchases From Federal Prison Industries–Requirement for MarketResearch	2003–023	Nelson.
*VII	Exception from Buy American Act for CommercialInformation Technology (Interim)	2005–022	Marshall.
VIII	Removal of Sanctions Against Libya	2005–026	Marshall.
IX	Elimination of Certain Subcontract NotificationRequirements	2003–024	Cundiff.
X	Annual Representations and Certifications–NAICSCode/Size	2005–006	Zaffos.
XI	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–07 amends the FAR as specified below:

Item I—Transportation: Standard Industry Practices (FAR Case 2002–005)

This final rule amends FAR Parts 1, 42, 46, 47, 52, and 53 to clarify and update the FAR coverage to reflect the latest changes to the Federal Management Regulation and statutes that require use of commercial bills of lading for domestic shipments. This final rule amends the FAR to—

• Move FAR Subpart 42.14, Traffic and Transportation Management, to FAR Part 47, Transportation;

• Delete the clauses at FAR 52.242–10 and FAR 52.242–11 and revise and relocate FAR clause 52.242–12 to FAR 52.247–68;

• Add definitions of "bill of lading," "commercial bill of lading," and "Government bill of lading" and clarify the usage of each term throughout FAR Part 47;

• Add definitions of "Government rate tenders," "household goods," "noncontiguous domestic trade," and "released or declared value";

• Require the use of commercial bills of lading for domestic shipments;

• Revise the references to "49 U.S.C. 10721" to read "49 U.S.C. 10721 and 13712" throughout FAR Part 47 to make it clear that Government rate tenders can be used in certain situations for the transportation of household goods by rail carrier (authorized by 49 U.S.C. 10721), as well as by motor carrier, water carrier, and freight forwarder (authorized by 49 U.S.C. 13712 and the definition of "carrier" at 49 U.S.C. 13102); and

• Update the fact that the Federal Motor Carrier Safety Administration prescribes commercial zones at 49 CFR 372 Subpart B.

Item II—Common Identification Standard for Contractors (FAR Case 2005–015)

This interim rule amends the FAR by addressing the contractor personal identification requirements in Homeland Security Presidential Directive (HSPD–12), "Policy for a Common Identification Standard for Federal Employees and Contractors," and Federal Information Processing Standards Publication (FIPS PUB) Number 201, "Personal Identity Verification (PIV) of Federal Employees and Contractors." The primary objectives of HSPD–12 are to establish a process to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy by establishing a mandatory, Governmentwide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors.

Item III—Change to Performance-based Acquisition (FAR Case 2003–018)

This final rule amends the FAR by changing the terms "performance-based contracting (PBC)" and "performance-based service contracting (PBSC)" to "performance-based acquisition (PBA)" throughout the FAR; adding applicable PBA definitions of "Performance Work Statement (PWS)" and "Statement of Objectives (SOO)", and describing their uses; clarifying the order of precedence for requirements; eliminating redundancy where found; modifying the regulation to broaden the scope of PBA and give agencies more flexibility in applying PBA methods to contracts and orders of varying complexity; and reducing the burden of force-fitting contracts and orders into PBA, when it is not appropriate.

Item IV—Free Trade Agreements—Australia and Morocco (FAR Case 2004–027)

This final rule converts the interim rule published at 69 FR 77870, December 28, 2004, to a final rule with changes. It allows contracting officers to purchase the products of Australia without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. The U.S. Trade Representative negotiated Free Trade Agreements with Australia and Morocco, which were scheduled to go into effect on or after January 1, 2005, according to Public Laws 108–286 and 108–302. However, the Morocco Free Trade Agreement has not yet entered into force and, therefore, the implementation of the Morocco Free Trade Agreement has been removed from the final rule. The Australian Free Trade Agreement joins the North American Free Trade Agreement (NAFTA) and the Chile and Singapore Free Trade Agreements which are already in the FAR. The threshold for

applicability of the Australian Free Trade Agreement is $58,550 (the same as other Free Trade Agreements to date).

Item V—Deletion of the Very Small Business Pilot Program (FAR Case 2005–013)

This final rule amends the FAR to delete the Very Small Business Pilot Program. Under the pilot program, contracting officers were required to set-aside for very small business concerns certain acquisitions with an anticipated dollar value between $2,500 and $50,000. The Councils are removing the FAR coverage because the legislative authority for the program terminated on September 30, 2003. Acquisitions previously set aside for pilot program vendors will now be open to other small businesses.

Item VI—Purchases From Federal Prison Industries–Requirement for Market Research (FAR Case 2003–023)

This final rule converts the interim rule published in FAC 2001–21 at 69 FR 16148, March 26, 2004, and the interim rule published as Item I of FAC 2005–03 at 70 FR 18954, April 11, 2005, to a final rule with amendments at FAR 8.602 to clarify the applicability of the rule. The rule implements Section 637 of Division H of the Consolidated Appropriations Act, 2005. Section 637 provides that no funds made available under the Consolidated Appropriations Act for fiscal year 2005, or under any other Act for fiscal year 2005 and each fiscal year thereafter, shall be expended for purchase of a product or service offered by Federal Prison Industries, Inc., unless the agency making the purchase determines that the offered product or service provides the best value to the buying agency, pursuant to Governmentwide procurement regulations issued pursuant to 41 U.S.C. 421(c)(1) that impose procedures, standards, and limitations of 10 U.S.C. 2410n.

Item VII—Exception from Buy American Act for Commercial Information Technology (FAR Case 2005–022)

This interim rule amends FAR 25.103 and FAR Subpart 25.11 to implement Section 517 of Division H, Title V of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447). Section 517 authorizes exemption from the Buy American Act for acquisitions of information technology that are commercial items. This applies only to the use of FY 2005 funds. This same exemption appeared last year in section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004 (Pub. L. 108–199). The FY 04 exemption was implemented through deviations by the individual agencies.

The interim rule is based on the estimation that the exemption of commercial information technology is likely to continue. If the exception does not appear in a future appropriations act, a prompt change to the FAR will be made to limit applicability of the exemption to the fiscal years to which it applies. The effect of this exemption is that the following clauses are no longer applicable in acquisition of commercial information technology:

- FAR 52.225–1, Buy American Act—Supplies.
- FAR 52.225–2, Buy American Act Certificate.
- FAR 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act.
- FAR 52.225–4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.

This is because the Buy American Act no longer applies; and the Free Trade Agreement non-discriminatory provisions are no longer necessary, since all products now are treated without the restrictions of the Buy American Act.

Item VIII—Removal of Sanctions Against Libya (FAR Case 2005–026)

This final rule removes Libya from the list of prohibited sources at FAR Subpart 25.7 and the associated clause at 52.225–13, Restriction on Certain Foreign Purchases. Acquisitions of products from Libya may still be subject to restrictions of the Buy American Act, trade agreements, or other domestic source restrictions. The Department of State has not yet removed Libya from the list of state sponsors of terrorism.

Item IX—Elimination of Certain Subcontract Notification Requirements (FAR Case 2003–024)

This final rule converts, with minor changes, the Federal Acquisition Regulation (FAR) interim rule published in the **Federal Register** at 70 FR 11761, March 9, 2005. The rule impacts contractors with Department of Defense (DoD), National Aeronautics and Space Administration (NASA), or Coast Guard cost-reimbursement contracts and Government personnel who award and administer those contracts. The interim rule amended FAR 44.201–2, Advance Notification Requirements, and 52.244–2, Subcontracts, to implement Section 842 of the National Defense Authorization Act for Fiscal Year 2004, in Public Law 108–136. Section 842 removed the requirement under cost-reimbursement contracts with DoD, Coast Guard, and NASA for contractors to notify the agency before the award of any cost-plus-fixed-fee subcontract or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract if the contractor maintains a purchasing system approved by the contracting officer for the contract. The final rule makes two changes that resulted from one of the public comments. The final rule deletes Alternate I from FAR 44.204, Contract clauses for the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, and deletes the current Alternate I from 52.244–2, Subcontracts.

Item X—Annual Representations and Certifications—NAICS Code/Size (FAR Case 2005–006)

This final rule amends the FAR provision at 52.204–8 to provide a place for contracting officers to inform prospective offerors of the NAICS code and small business size standard applicable to the procurement.

Item XI—Technical Amendments

Editorial changes are made at FAR 9.203(b)(2), 11.102, 11.201(a), 11.201(b), 11.201(d)(2), 11.201(d)(3), 11.201(d)(4), 11.204(b), 25.1101(e)(2), and the provisions at 52.211–2 and 52.212–1 in order to update references.

The authority citation for FAR parts 27, 34, 38, 39, 43, 46, 48, and 50 is revised.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

[FR Doc. 05–24559 Filed 12–30–05; 8:45 am]

BILLING CODE 6820–EP–S

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Tuesday, January 3, 2006

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CFR PARTS AFFECTED DURING JANUARY

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.

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 JANUARY 3, 2006

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Walnuts grown in—
- California
  - Walnut Marketing Board; membership eligibility; published 12-2-05

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Magnuson-Stevens Act provisions—
  - Pacific Coast groundfish; fishing capacity reduction program; published 1-3-06

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Commercial information technology; Buy American Act exception; published 1-3-06
- Common indentification standard for contractors; published 1-3-06
- Free trade agreements—
  - Australia and Morocco; published 1-3-06
- North American Industry Classification System code and small business size standard; annual representations and certifications; published 1-3-06
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''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.

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H.R. 4195/P.L. 109–138
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H.R. 4324/P.L. 109–139
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H.J. Res. 38/P.L. 109–142

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S. 335/P.L. 109–143

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H.R. 327/P.L. 109–147
To allow binding arbitration clauses to be included in all contracts affecting land within the Gila River Indian Community Reservation. (Dec. 22, 2005; 119 Stat. 2679)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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40 Parts:			
1–49	(869–056–00138–0)	60.00	July 1, 2005
50–51	(869–056–00139–8)	45.00	July 1, 2005
52 (52.01–52.1018)	(869–056–00140–1)	60.00	July 1, 2005
52 (52.1019–End)	(869–056–00141–0)	61.00	July 1, 2005
53–59	(869–056–00142–8)	31.00	July 1, 2005
60 (60.1–End)	(869–056–00143–6)	58.00	July 1, 2005
60 (Apps)	(869–056–00144–4)	57.00	July 1, 2005
61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
63 (63.1200–63.1439)	(869–056–00148–7)	50.00	July 1, 2005
63 (63.1440–63.6175)	(869–056–00149–5)	32.00	July 1, 2005
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
64–71	(869–056–00152–5)	29.00	July 1, 2005
72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–056–00154–1)	60.00	July 1, 2005
86 (86.1–86.599–99)	(869–056–00155–0)	58.00	July 1, 2005
86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
87–99	(869–056–00157–6)	60.00	July 1, 2005
100–135	(869–056–00158–4)	45.00	July 1, 2005
136–149	(869–056–00159–2)	61.00	July 1, 2005
150–189	(869–056–00160–6)	50.00	July 1, 2005
190–259	(869–056–00161–4)	39.00	July 1, 2005
260–265	(869–056–00162–2)	50.00	July 1, 2005
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–056–00166–5)	61.00	July 1, 2005
700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–056–00168–1)	61.00	July 1, 2005
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–056–00169–0)	24.00	July 1, 2005
101	(869–056–00170–3)	21.00	July 1, 2005
102–200	(869–056–00171–1)	56.00	July 1, 2005
201–End	(869–056–00172–0)	24.00	July 1, 2005
42 Parts:			
1–399	(869–056–00173–8)	61.00	Oct. 1, 2005
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–056–00175–4)	64.00	Oct. 1, 2005
43 Parts:			
1–999	(869–056–00176–2)	56.00	Oct. 1, 2005
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–056–00178–9)	50.00	Oct. 1, 2005
45 Parts:			
1–199	(869–056–00179–7)	60.00	Oct. 1, 2005
200–499	(869–056–00180–1)	34.00	Oct. 1, 2005
500–1199	(869–056–00171–9)	56.00	Oct. 1, 2005
1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
*1–40	(869–056–00183–5)	46.00	Oct. 1, 2005
41–69	(869–056–00184–3)	39.00	[9]Oct. 1, 2005
70–89	(869–056–00185–1)	14.00	[9]Oct. 1, 2005
90–139	(869–056–00186–0)	44.00	Oct. 1, 2005
140–155	(869–056–00187–8)	25.00	Oct. 1, 2005
156–165	(869–056–00188–6)	34.00	[9]Oct. 1, 2005
166–199	(869–056–00189–4)	46.00	Oct. 1, 2005
200–499	(869–056–00190–8)	40.00	Oct. 1, 2005
500–End	(869–056–00191–6)	25.00	Oct. 1, 2005
47 Parts:			
0–19	(869–056–00192–4)	61.00	Oct. 1, 2005
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
1 (Parts 1–51)	(869–056–00197–5)	63.00	Oct. 1, 2005
*1 (Parts 52–99)	(869–056–00198–3)	49.00	Oct. 1, 2005
*2 (Parts 201–299)	(869–056–00199–1)	50.00	Oct. 1, 2005
3–6	(869–056–00200–9)	34.00	Oct. 1, 2005
7–14	(869–056–00201–7)	56.00	Oct. 1, 2005
15–28	(869–056–00202–5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004
49 Parts:			
1–99	(869–056–00204–1)	60.00	Oct. 1, 2005
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–056–00209–2)	64.00	Oct. 1, 2005
600–999	(869–056–00210–6)	19.00	Oct. 1, 2005
1000–1199	(869–056–00211–4)	28.00	Oct. 1, 2005
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–056–00213–1)	11.00	Oct. 1, 2005
17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–056–00217–3)	47.00	Oct. 1, 2005
18–199	(869–056–00218–1)	50.00	Oct. 1, 2005
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
CFR Index and Findings Aids	(869–056–00050–2)	62.00	Jan. 1, 2005
Complete 2006 CFR set		1,398.00	2006
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2006
Individual copies		4.00	2006
Complete set (one-time mailing)		325.00	2005
Complete set (one-time mailing)		325.00	2004

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 2006

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
Jan 3	Jan 18	Feb 2	Feb 17	March 6	April 3
Jan 4	Jan 19	Feb 3	Feb 21	March 6	April 4
Jan 5	Jan 20	Feb 6	Feb 21	March 6	April 5
Jan 6	Jan 23	Feb 6	Feb 21	March 7	April 6
Jan 9	Jan 24	Feb 8	Feb 23	March 10	April 10
Jan 10	Jan 25	Feb 9	Feb 24	March 13	April 10
Jan 11	Jan 26	Feb 10	Feb 27	March 13	April 11
Jan 12	Jan 27	Feb 13	Feb 27	March 13	April 12
Jan 13	Jan 30	Feb 13	Feb 27	March 14	April 13
Jan 17	Feb 1	Feb 16	March 3	March 20	April 17
Jan 18	Feb 2	Feb 17	March 6	March 20	April 18
Jan 19	Feb 3	Feb 21	March 6	March 20	April 19
Jan 20	Feb 6	Feb 21	March 6	March 21	April 20
Jan 23	Feb 7	Feb 22	March 9	March 24	April 24
Jan 24	Feb 8	Feb 23	March 10	March 27	April 24
Jan 25	Feb 9	Feb 24	March 13	March 27	April 25
Jan 26	Feb 10	Feb 27	March 13	March 27	April 26
Jan 27	Feb 13	Feb 27	March 13	March 28	April 27
Jan 30	Feb 14	March 1	March 16	March 31	May 1
Jan 31	Feb 15	March 2	March 17	April 3	May 1