3–22–06 Wednesday
Vol. 71 No. 55 Mar. 22, 2006

Pages 14355–14628

Federal Register

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

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Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Presidential Documents

Title 3—

The President

Proclamation 7989 of March 17, 2006

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2006

By the President of the United States of America

A Proclamation

On Greek Independence Day, we celebrate the proud heritage of Greek Americans, recognize the longstanding friendship between the United States and Greece, and reaffirm our shared desire to spread freedom to people around the world.

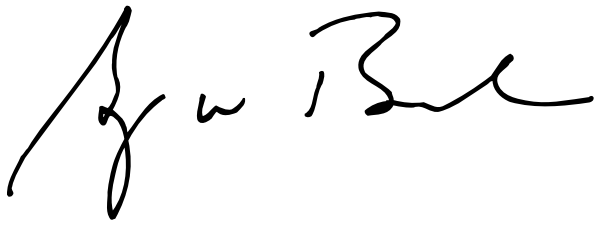
Greece is the birthplace of democratic principles, and the story of modern Greek independence demonstrates the power of liberty. On March 25, 1821, Greek revolutionaries declared their independence from the Ottoman Empire after centuries of imperial rule. This bold action began an 11-year war to secure their freedom and gain recognition as a sovereign country. Americans at the time identified with the Greek struggle and provided support to aid the effort. Leaders such as John Adams, Thomas Jefferson, and James Madison encouraged the Greek cause and supported the desire for a representative government that would ensure liberty and justice for all its citizens, and they offered our Constitution as a model for consideration.

A strong cooperation and friendship has developed between Greece and America, and our Nation has benefited from the contributions of Greek immigrants. The hard work of Greek Americans has made our country stronger and influenced our literature, arts, businesses, politics, education, and entertainment. The faith, traditions, and patriotism of Greek Americans have enriched our society.

The United States and Greece are bound together by common values and a deep desire to protect and extend freedom and peace. On this special occasion, we celebrate our friendship and our commitment to advancing democracy, prosperity, and security.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 25, 2006, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy. I call upon all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of March, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 06–2810
Filed 3–21–06; 8:45 am]
Billing code 3195–01–P

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

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

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2006–7]

Definition of Federal Election Activity

AGENCY: Federal Election Commission.

ACTION: Interim Final Rule.

SUMMARY: The Federal Election Commission (''Commission'') is revising the regulation defining the phrase ''in connection with an election in which a candidate for Federal office appears on the ballot.'' The Bipartisan Campaign Reform Act of 2002 (''BCRA'') amended the Federal Election Campaign Act of 1971 (''FECA''), to provide that when voter identification, get-out-the-vote activity, and generic campaign activities are in connection with an election in which a candidate for Federal office appears on the ballot, they are ''Federal election activity'' (''FEA''), subject to certain funding limits and prohibitions. In its new interim final rule, the Commission specifies when voter identification and get-out-the-vote activity are conducted exclusively in connection with non-Federal elections and are therefore not FEA. The Commission is soliciting comments on all aspects of the interim final rule and may amend the interim rule as appropriate in response to comments received. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

DATES: The interim final rule is effective on March 24, 2006. Comments must be received on or before May 22, 2006.

ADDRESSES: All comments must be in writing, must be addressed to Ms. Mai T. Dinh, Assistant General Counsel, and must be submitted in either e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail or fax to ensure timely receipt and consideration. E-mail comments must be sent to either *nonfederal.election@fec.gov* or submitted through the Federal eRegulations Portal at *www.regulations.gov*. If e-mail comments include an attachment, the attachment must be in Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper copy comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, or Mr. J. Duane Pugh Jr., Senior Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (2002), amended FECA by adding a new term, ''Federal election activity,'' to describe certain activities that State, district, and local party committees must pay for with either Federal funds or a combination of Federal and Levin funds.[1] 2 U.S.C. 431(20) and 441i(b)(1). The FEA requirements apply to all State, district, and local party committees and organizations, regardless of whether they are registered as political committees with the Commission. The term also affects fundraising on behalf of tax-exempt organizations.[2]

BCRA specifies that voter identification, get-out-the-vote activity (''GOTV activity''), and generic campaign activity (collectively ''Type II FEA'') constitute FEA only when these activities are conducted ''in connection with an election in which a candidate for Federal office appears on the ballot.'' 2 U.S.C. 431(20)(A)(ii). In 2002, the Commission defined ''in connection with an election in which a candidate for Federal office appears on the ballot'' as beginning on the filing deadline for access to the primary election ballot and ending on the date of the general election, or, in those States that do not conduct primaries, as beginning on January 1 of each even-numbered year. *See* 11 CFR 100.24(a)(1). The Commission is now issuing an interim final rule refining the definition of ''in connection with an election in which a candidate for Federal office appears on the ballot'' to clarify when activities and communications are in connection with a non-Federal election, and are not in connection with a Federal election, and therefore are not Type II FEA.

Under the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b), agencies must provide public notice and an opportunity for comment (''notice and comment'') before they may promulgate final rules. However, the ''good cause'' exemption allows an agency to waive this requirement if the agency determines that notice and comment is ''impracticable, unnecessary or contrary to the public interest.'' *See* 5 U.S.C. 553(b)(B). For the reasons stated below, the Commission determines that providing notice and comment for the interim final rule would be impracticable and contrary to the public interest.

The Type II FEA time period currently applies throughout much of the country, while scores of municipalities have scheduled non-Federal elections as early as March 2006. Thus, political campaign activity related to the upcoming non-Federal elections will fall within the Type II FEA time period as defined in 11 CFR 100.24(a)(1)(i). The interim final rule at new section 100.24(a)(1)(iii) ensures that the FEA requirements do not extend to activities that are solely in connection with these upcoming non-Federal elections and are therefore beyond the scope of FECA. Any delay for notice and comment would make it impossible to promulgate section 100.24(a)(1)(iii) before the upcoming non-Federal elections and would cause

[1] ''Federal funds'' are funds subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 11 CFR 300.2(g). ''Levin funds'' are funds raised by State, district, and local party committees pursuant to the restrictions in 11 CFR 300.31 and disbursed subject to the restrictions in 11 CFR 300.32. *See* 11 CFR 300.2(i).

[2] National, State, district and local party committees are prohibited from soliciting or directing non-Federal funds to tax-exempt entities organized under 26 U.S.C. 501(c) that engage in FEA or make other disbursements or expenditures in connection with a Federal election. 2 U.S.C. 441i(d)(1). Also, Federal candidates and officeholders may make only limited solicitations for funds on behalf of tax-exempt entities organized under U.S.C. 501(c) whose principal purpose is to conduct certain types of FEA. 2 U.S.C. 441i(e)(4).

the FEA regulations to cover improperly activities that as a matter of law are *not* in connection with an election for Federal office.

Additionally, other regulatory changes in 2006 enhance the need to distinguish activities that are ''in connection with'' a Federal election from those activities that are not. *See Final Rules on the Definition of Federal Election Activity,* 71 FR 8926 (Feb. 22, 2006) (''*2006 Final Rules*''). These other changes were required by the *Shays* district court and will take effect March 24, 2006. In order to have one consistent definition of ''FEA'' for the remainder of this election cycle, the interim final rule needs to be effective on the same date that the *2006 Final Rules* are effective. Therefore, it would be impracticable and contrary to the public interest to delay promulgation of the interim final rule to provide notice and comment prior to the implementation of new section 100.24(a)(1)(iii). *See* 5 U.S.C. 553(b)(B).

For the same reasons the Commission is promulgating the interim final rule under the ''good cause'' exception in 5 U.S.C. 553(b)(B), the effective date does not need to be delayed 30 days from the date of publication in the **Federal Register** under 5 U.S.C. 553(d)(3). Therefore, the interim final rule at 11 CFR 100.24(a)(1)(iii) will take effect on March 24, 2006.

The Commission seeks public comment on the interim final rule. The Commission will consider such comments, along with the written comments and hearing testimony on the issues raised in the Notice of Proposed Rulemaking on the Definition of Federal Election Activity, 70 FR 23068 (May 4, 2005) (''*2005 NPRM*''), and it intends to promulgate a Final Rule addressing activities that are limited to elections for non-Federal offices as soon as its rulemaking calendar permits. Seeking public comment on a rule that has taken effect permits the Commission simultaneously to implement FECA properly, to comply with the requirements of the *Shays* district court decision in a timely manner, and to seek and consider additional public comment before promulgating a Final Rule in this area. The interim final rule provides that it will not apply to activities or communications that take place after September 1, 2007. *See* new 11 CFR 100.24(a)(1)(iii)(B). The Commission expects to consider any public comments and may adopt a Final Rule that can be effective on or before that date.

Under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1)(A), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate before they take effect. The interim final rule was transmitted to Congress on March 17, 2006. Unless the final rules are major rules, the effective date for final rules is the date they become effective under the APA. Because the interim final rule is not a major rule, it takes effect on March 24, 2006 for the reasons stated above.

Explanation and Justification for 11 CFR 100.24(a)(1)(iii)

In its 2002 definitions of ''FEA,'' the Commission established a time period for determining when voter identification, GOTV activity, and generic campaign activities are ''in connection with'' a Federal election. The time period begins on the date of the earliest filing deadline for a primary election ballot for Federal candidates in each particular State and ends on the date of the general election, up to and including any runoff election date. *See* 11 CFR 100.24(a)(1)(i). For States that do not hold primary elections, the period begins January 1 of each even-numbered year. *Id.* For special elections in which Federal candidates are on the ballot, the period begins when the date of the special election is set and ends on the date of the special election. *See* 11 CFR 100.24(a)(1)(ii).

2005 Notice of Proposed Rulemaking

In 2004, several of the Commission's rules defining FEA terms were reviewed by the U.S. District Court for the District of Columbia in *Shays* v. *FEC,* 337 F. Supp. 2d 28 (D.D.C. 2004), aff'd, 414 F.3d 76 (D.C. Cir. 2005) (''*Shays*''). In response to the district court's decision, the Commission published a Notice of Proposed Rulemaking on May 4, 2005. *See 2005 NPRM.* In addition to proposing possible modifications to the FEA definitions affected by the *Shays* decision, the *2005 NPRM* also proposed several changes to the definition of ''in connection with an election in which a candidate for Federal office appears on the ballot'' in 11 CFR 100.24(a)(1).

The *2005 NPRM* sought comment on three proposed exceptions to the Type II FEA time period in 11 CFR 100.24(a)(1). *See 2005 NPRM,* 70 FR at 23071 and 23072. The first proposed exception would have applied to special elections for Federal office that are scheduled to be held on the same date as previously scheduled State or local elections. *Id.*, 70 FR at 23071. The second proposed exception would have applied to municipal elections that take place during the Type II FEA time period, but on dates other than Federal election dates. *Id.*, 70 FR at 23071 and 23072. The third proposed exception would have taken a narrower approach, excepting only GOTV activities within 72 hours before a non-Federal election. *Id.*, 70 FR at 23071.

The Commission received several comments on the issues raised in the *2005 NPRM.*[3] Some commenters opposed any further restrictions on when activity will be considered FEA as contrary to Congress's intent in BCRA. Other commenters supported the proposed exceptions and the Commission's attempt to limit the scope of the FEA requirements. Some commenters gave examples of municipal elections that were scheduled within Type II FEA time periods and argued that an exception for these municipal elections was appropriate and necessary. One commenter who generally supported the exceptions sought clarification as to how the municipal election exception would apply to State and local political party committees in States where some of the municipal elections met the requirements of the exception. This commenter noted that the proposal did not address whether all of a State political party committee's activities would enjoy the exception if one municipality in the State had an election that met the requirements of the exception, and if not, how the State political party committee should divide its Type II FEA into excepted and not excepted FEA.

After reviewing written comments on the *2005 NPRM* and conducting a public hearing on August 4, 2005, the Commission approved Final Rules and an Explanation and Justification on the Definition of Federal Election Activity. *See 2006 Final Rules.* The Commission decided not to amend the definition of ''in connection with an election in which a candidate for Federal office appears on the ballot'' by incorporating any of the proposed exceptions as part of the *2006 Final Rules.* Rather, the Commission decided to promulgate a more narrowly focused final rule, but also wanted the benefit of comments on the final rule. Thus, the Commission is adopting this interim final rule so that new rules on FEA will operate seamlessly while the Commission acts to finalize the definition of ''FEA.''

[3] All comments and a transcript of the public hearing related to the *2005 NPRM* are available at *http://www.fec.gov/law/law_rulemakings.shtml* under ''Definition of Federal Election Activity.''

New 11 CFR 100.24(a)(1)(iii)—Voter Identification and Get-Out-the-Vote Activities Limited to Non-Federal Elections

BCRA requires State, district, and local political party committees and organizations to finance FEA with Federal funds or, in some instances, with an allocated mix of Federal funds and Levin funds. 2 U.S.C. 441i(b). One of the principal sponsors of BCRA described its FEA provisions as ''a balanced approach which addresses the very real danger that Federal contribution limits could be evaded by diverting funds to State and local parties,'' while ''not attempt[ing] to regulate State and local party spending where this danger is not present, and where State and local parties engage in purely non-Federal activities.'' 148 Cong. Rec. S2138 (daily ed. Mar. 20, 2002) (Statement of Sen. McCain).

BCRA does not authorize the Commission to regulate voter identification and GOTV activity by State, district, and local political party committees and certain other groups that are exclusively in connection with non-Federal elections. Yet under the current regulation, that is exactly what can happen. Scores of communities of all sizes—from large cities like Orlando, Florida; Sacramento, California; and Norfolk, Virginia; to small cities like Sand Springs, Oklahoma—conduct entirely non-Federal elections that fall within Type II FEA time periods because of Federal elections that are held on a later date in the election cycle. *See, e.g., http://www.usmayors.org/uscm/elections/99elections.asp?Action=View* (listing previous mayoral elections by date) (last visited Mar. 8, 2006). Moreover, some of the amendments adopted in the *2006 Final Rules,* adopted pursuant to the *Shays* decision, bring FEA conducted by associations of local candidates within BCRA's funding restrictions. Under the regulations as revised by the *2006 Final Rules,* even a non-partisan association of non-Federal candidates would be required to use Federal funds for FEA.

The Commission, therefore, is adopting an interim final rule that better distinguishes between voter identification and GOTV activities that are FEA, and those activities that are not FEA because they do not involve elections in which Federal candidates are on the ballot. *See* 2 U.S.C. 431(20)(A)(ii); new 11 CFR 100.24(a)(1)(iii). The interim final rule is a narrower measure than the exceptions proposed in the *2005 NPRM* in several respects.

First, proposals in the *2005 NPRM* would have excepted all forms of Type II Federal election activities based only on the fact that they preceded the date of a municipal election. Instead of using timing as the dispositive factor, the interim final rule includes affirmative requirements for the content of the communications and activities that must be satisfied to ensure that the interim final rule applies only to communications and activities that are solely in connection with an election in which no Federal candidate appears on the ballot. Second, the interim final rule does not apply to purely generic campaign activity, as discussed further below. The interim final rule's approach of focusing on the nature of the voter identification and GOTV efforts, both of which relate to specific candidates or particular elections, represents a more tailored approach that would avoid imposing Federal funding restrictions on efforts related to non-Federal elections that simply happen to fall within the Type II FEA time periods. Finally, the interim final rule is effective for a limited duration. *See* new section 100.24(a)(1)(iii)(B).

New section 100.24(a)(1)(iii) requires that a non-Federal election must be held on a date separate from any Federal election and the communication or activity must be in connection with the non-Federal election. Any activity that is also in connection with a Federal election renders the interim final rule inapplicable.

Under the interim final rule, the activity or communication must refer exclusively to one or more of the following three topics: (1) The non-Federal candidates on the ballot; (2) ballot initiatives or referenda; or (3) the date, time, and polling locations of the non-Federal election. 11 CFR 100.24(a)(1)(iii)(A)(*1*) to (*3*). If a non-Federal candidate is also seeking Federal office and has satisfied FECA's definition of ''candidate,'' then references to that candidate would not qualify for the interim final rule. The ''exclusive'' requirement of new section 100.24(a)(1)(iii)(A) means that the activity or communication may not refer to candidates or elections other than the non-Federal election that triggers new section 100.24(a)(1)(iii). For an activity to be covered by the interim final rule, it must include a communication that addresses one or more of the three topics listed in section 100.24(a)(1)(iii)(A)(*1*) to (*3*).

In contrast, generic campaign activity, by definition, promotes a political party and does not promote a Federal or non-Federal candidate, so generic campaign activity cannot satisfy the requirement of ''exclusively'' referring to non-Federal candidates, ballot initiatives, or non-Federal polling place and time information. *See* 2 U.S.C. 431(21); *see also* 11 CFR 100.25. No generic campaign activity, therefore, will satisfy the requirements of the interim final rule. Thus, the interim final rule operates so that it can apply only to voter identification and GOTV activities. The Commission seeks comment on whether this is an appropriate determination or whether generic campaign activities should be included when the Commission promulgates a final rule.

Voter identification and GOTV activities can include a generic component and remain eligible for the interim final rule. For example, a GOTV phone bank that urges voters to vote for ''Smith, the Democratic candidate for Mayor'' and that also refers to ''the great Democratic team'' could qualify for the interim final rule (assuming it meets the other requirements of 11 CFR 100.24(a)(1)(iii)).

Voter list acquisition generally will not qualify for the interim final rule because most State, district and local party committees and organizations will acquire voter lists for use in connection with more than one election.[4] However, if a State, district, or local party committee or organization were to acquire a voter list to conduct GOTV activities and/or voter identification exclusively for a municipal election,[5] acquisition of the voter list would not be Type II FEA. Under these circumstances, the interim final rule permits a State, district or local party committee or organization to use an allocable mix of Federal and non-Federal funds under 11 CFR 106.7(b), (c)(3), and (c)(5) to acquire this voter list.[6]

For example, if a local party committee chooses to acquire a list of voters for a municipal election during the Type II FEA time period, the voter list must be the closest available to the list of eligible voters in the non-Federal election. If a municipality is conducting an election during the Type II FEA time

[4] State, district and local party committees would also have to use at the list in an activity that refers exclusively to one or more of the three topics listd in new section 100.24(a)(1)(iii)(A)(*1*) through (*3*).

[5] References to municipal elections are exemplary only; new section 100.24(a)(1)(iii) applies to all types of non-Federal elections that are held on dates separate from dates of any Federal elections.

[6] Pursunt to 11 CFR 106.7(b) political party organizations that are not political committees under FECA may establish separate Federal and non-Federal accounts or use a ''reasonable accounting method approved by the Commision'' to allcoate their voter drive expenses between Federal and non-Federal funds.

period, but only a countywide voter list is available, acquisition of the that voter list would still fall within new section 100.24(a)(1)(iii) and would not be Type II FEA. However, if the local party committee acquires a voter list that is for a geographic region that is larger than the municipality conducting the non-Federal election and a small voter list covering the municipality is available, the acquisition of the larger voter list would be Type II FEA. Choosing a list of voters that goes beyond the voters participating in the municipal election demonstrates that the voter identification program is not exclusively in connection with the municipal election.

The interim final rule is consistent with section 441i(b) of BCRA, which seeks to regulate the funds used for Type II FEA that are in connection with Federal elections by State, district, and local political party committees and organizations. In defining ''FEA,'' BCRA limited the definition to voter registration activity within 120 days of a Federal election and to Type II FEA that are ''in connection with'' an election in which a Federal candidate appears on the ballot. *See* 2 U.S.C. 431(20)(A)(i) and (ii). Thus, BCRA recognizes that some voter registration activity, voter identification, GOTV activity, and generic campaign activity is not FEA. New section 100.24(a)(1)(iii) applies only to voter identification and GOTV activities that are not ''in connection with an election in which a candidate for Federal office appears on the ballot,'' as required by BCRA.

The interim final rule will not lead to circumvention of BCRA. The definition of ''FEA'' as amended by the interim final rule fully captures the activities Congress sought to subject to BCRA's funding restrictions. As noted above, the FEA provisions in BCRA address ''the very real danger that Federal contribution limits could be evaded by diverting funds to State and local parties,'' and it does so ''while preserving the rights and abilities of our State and local parties to engage in truly local activity.'' *See* 148 Cong. Rec. S2138 (daily ed. Mar. 20, 2002) (Statement of Sen. McCain). The new interim final rule does not create an opportunity for such evasion because the communications and activities that fall within the rule are ''purely non-Federal activities,'' which the FEA provisions were not intended to reach. *See id.* Lastly, State, district, and local political party committees and organizations must continue to use an allocable mix of Federal and non-Federal funds to pay for any communications or activities covered by the new interim final rule. *See* 11 CFR 106.7(b), (c)(3), and (c)(5). Therefore, even under the new interim final rule, use of non-Federal funds for those communications and activities remains limited.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached interim final rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the organizations affected by this rule are State, district, and local political party committees, which are not ''small entities'' under 5 U.S.C. 601. These not-for-profit committees do not meet the definition of ''small organization,'' which requires that the enterprise be independently owned and operated and not dominant in its field. 5 U.S.C. 601(4). State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately. To the extent that any State party committees representing minor political parties might be considered ''small organizations,'' the number affected by this rule is not substantial. Finally, new § 100.24(a)(1)(iii) operates to relieve funding restrictions, which reduces the economic impact on any affected entities.

List of Subjects in 11 CFR Part 100

Elections.

■ For the reasons set out in the preamble, Subchapter A of Chapter 1 of Title 11 of the *Code of Federal Regulations* is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

■ 1. The authority citation for 11 CFR part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

■ 2. In § 100.24, paragraph (a)(1)(iii) is added to read as follows:

§ 100.24 Federal Election Activity (2 U.S.C. 431(20)).

(a) * * *

(1) * * *

(iii) *Voter Identification and Get-Out-the-Vote Activities Limited to Non-Federal Elections.*

(A) Notwithstanding paragraphs (a)(1)(i) and (ii) of this section, *in connection with an election in which a candidate for Federal office appears on the ballot* does not include any activity or communication that is in connection with a non-Federal election that is held on a date separate from a date of any Federal election and that refers exclusively to:

(*1*) Non-Federal candidates participating in the non-Federal election, provided the non-Federal candidates are not also Federal candidates;

(*2*) Ballot referenda or initiatives scheduled for the date of the non-Federal election; or

(*3*) The date, polling hours and locations of the non-Federal election.

(B) Paragraph (a)(1)(iii) of this section shall not apply to any activities or communications after September 1, 2007.

* * * * *

Dated: March 16, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. 06–2766 Filed 3–21–06; 8:45 am]

BILLING CODE 6715–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 404

Production of Records and Testimony of Personnel of the Export-Import Bank of the United States in Legal Proceedings

AGENCY: Export-Import Bank of the United States (''Ex-Im Bank'').

ACTION: Final rule.

SUMMARY: Ex-Im Bank is adopting a regulation that establishes policy and prescribes procedures with respect to the testimony of Ex-Im Bank personnel, both current and former, and the production of agency records, in legal proceedings. The regulation is designed to balance concerns such as preserving the time of Ex-Im Bank personnel for the conduct of official business against concerns such as whether the disclosure of information requested is necessary to prevent fraud or injustice. A proposed rule on this subject was published in the **Federal Register** on October 24, 2005 (70 FR 61395). Ex-Im Bank did not receive any comments on the proposed rule. Ex-Im Bank is accordingly

adopting the proposed provisions as a final rule without further change.

DATES: Effective March 22, 2006.

ADDRESSES: Office of the General Counsel, Export-Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: Brian J. Sonfield, Assistant General Counsel for Administration, Export-Import Bank of the United States, Phone: (202) 565–3439/Fax: (202) 565–3586.

SUPPLEMENTARY INFORMATION:

I. Background

Section 301 of title 5, United States Code, provides that the head of an Executive department may prescribe regulations for the custody, use and preservation of its records. The Supreme Court has interpreted this statute as allowing Federal agencies to promulgate regulations under the authority of section 301 establishing procedures governing the production of records and testimony by federal agency personnel in legal proceedings in which the agency is not a party. *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

Ex-Im Bank frequently receives demands for: (1) Testimony of its employees or (2) the production of agency records—in legal proceedings to which Ex-Im Bank is not a party. Ex-Im Bank currently does not have any regulations or procedures to address this situation.

II. Analysis of Final Rule

The final rule is designed to establish centralized Ex-Im Bank policies and procedures to govern the production of agency records and testimony regarding information acquired in the course of the performance of official duties by current and former Ex-Im Bank personnel in legal proceedings before Federal, state, and local entities (as specified in the regulation) in which Ex-Im Bank: (i) Is not a party; (ii) is not represented; (iii) does not have a direct and substantial interest; and (iv) is not providing representation to an individual or entity that is a party. The rule does not cover requests for information that are not part of legal proceedings, such as requests for records under the Freedom of Information Act, 5 U.S.C. 552.

The regulation is intended to address Ex-Im Bank's need to conserve official personnel resources for the performance of the agency's statutory duties while at the same time accommodating legitimate requests or demands for official records or testimony to the extent possible. The procedures established will also provide necessary internal controls for management of Ex-Im Bank personnel on official duty and for release of Ex-Im Bank records and information.

This regulation will not authorize any Ex-Im Bank personnel to refuse to comply with the law. Rather, the regulation will permit Ex-Im Bank personnel, under certain circumstances, to refuse to comply with a party to litigation's demand or a court order due to: (1) Incomplete compliance with this rule; or (2) a determination by the General Counsel that a challenge to, or immediate review of, the demand or order is legally appropriate.

These procedures will not infringe upon the judiciary or create new privileges not previously recognized by law but will simply make uniform a process of responding to each request or demand for the production of records or testimony by Ex-Im Bank personnel in private controversies. Further, these procedures will not impede Ex-Im Bank personnel's access to the courts in relation to legal matters unrelated to their official duties or not involving the official records of Ex-Im Bank.

III. Matters of Regulatory Procedure

Administrative Procedure Act

In compliance with the Administrative Procedure Act (5 U.S.C. 553), Ex-Im Bank Published a proposed rule on this subject in the **Federal Register**. This final rule will become effective as noted above.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a ''major rule,'' as defined by the Small Business Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more (as adjusted for inflation).

List of Subjects in 12 CFR Part 404

Administrative practice and procedure, Government employees, Information, Records.

■ Accordingly, for the reasons set forth in the preamble, the Export-Import Bank of the United States amends 12 CFR part 404 as follows:

PART 404—INFORMATION DISCLOSURE

■ 1. The authority citation for part 404 is revised to read as follows:

Authority: 5 U.S.C. 552 and 552a.

Section 404.7 also issued under E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Section 404.21 also issued under 5 U.S.C. 552a note.

Subpart C also issued under 5 U.S.C. 301, 12 U.S.C. 635.

■ 2. Subpart C is added to read as follows:

Subpart C—Demands for Testimony of Current and Former Ex-Im Bank Personnel and for Production of Ex-Im Bank Records

Sec.

404.24 General provisions.
404.25 Applicability.
404.26 Definitions.
404.27 Demand requirements.
404.28 Notification of General Counsel required.
404.29 Restrictions on testimony and production of records.
404.30 Factors General Counsel may consider in determining whether to authorize testimony and/or the production of records.
404.31 Procedure for declining to testify and/or produce records.
404.32 Procedure in the event a decision concerning a demand is not made prior to the time a response to the demand is required.
404.33 Procedure in the event of an adverse ruling.
404.34 Procedure for demands for testimony or production of documents regarding confidential information.
404.35 Procedure for requests for Ex-Im Bank employees to provide expert or opinion testimony.
404.36 No private right of action.

Subpart C—Demands for Testimony of Current and Former Ex-Im Bank Personnel and for Production of Ex-Im Bank Records

§ 404.24 General provisions.

(a) *Purpose.* This subpart establishes policy, assigns responsibilities and prescribes procedures with respect to:

(1) The production or disclosure of official information or records of Ex-Im Bank in all legal proceedings to which Ex-Im Bank is not a party;

(2) Demands for testimony of Ex-Im Bank personnel related to information acquired as a result of performance of their official duties, or by virtue of their official status, in all legal proceedings where Ex-Im Bank is not a party; and

(3) The offer of expert or opinion testimony by Ex-Im Bank personnel regarding matters related to the performance of their official duties.

(b) *Policy.* Ex-Im Bank seeks to further the following goals in enacting this subpart:

(1) Conservation of agency resources for official business;

(2) Minimization of agency involvement in controversial issues unrelated to its mission;

(3) Maintenance of the agency's impartiality amongst private litigants;

(4) Protection of confidential and/or sensitive information; and

(5) Maintenance of the integrity of the agency's deliberative processes.

§ 404.25 Applicability.

This subpart applies exclusively to demands for testimony and/or production of records issued to Ex-Im Bank personnel, in connection with legal proceedings to which Ex-Im Bank is not a party, regarding information acquired in the course of the performance of official duties or due to their official status. Nothing in this subpart shall be construed to waive the sovereign immunity of the United States. This subpart shall not apply to the following:

(a) Demands for testimony and/or production of records pursuant to a legal proceeding to which Ex-Im Bank is a party:

(b) Demands for testimony and/or production of records in those instances in which Ex-Im Bank personnel are asked to disclose information wholly unrelated to their official duties; and

(c) Congressional demands and requests for testimony or records.

§ 404.26 Definitions.

For purposes of this subpart, the following definitions shall apply—

Demand—includes an order, subpoena, or other compulsory process issued by a party in litigation or a court of competent jurisdiction, requiring the production or release of Ex-Im Bank information or records, or requiring the testimony of Ex-Im Bank personnel.

Ex-Im Bank personnel—includes any current or former officer or employee of Ex-Im Bank, including all individuals who have been appointed by, or subject to, the official supervision, jurisdiction, or control of any Ex-Im Bank employees. This definition encompasses all individuals hired through contractual agreements with Ex-Im Bank, such as: consultants, contractors, sub-contractors, and their employees.

Legal proceeding—a case or controversy pending before any federal, state, or local court, including a grand jury proceeding; a proceeding before a federal, state, or local administrative judge, board, or other similar body with adjudicative powers; or a legislative proceeding before a state or local legislative body.

Records—all documentary materials that Ex-Im Bank creates or receives in connection with the transaction of official business, including any materials classified as ''Federal records'' under 44 U.S.C. 3301 and its implementing regulations.

Testimony—written or oral statements, including, but not limited to, depositions, answers to interrogatories, affidavits, declarations, and any other statements made in a legal proceeding, including any expert or opinion testimony.

§ 404.27 Demand requirements.

A party's demand for testimony and/or production of records by Ex-Im Bank personnel regarding information acquired in the course of their performance of official duties or due to their official status shall be set forth in, or accompanied by, a signed affidavit or other written statement. Such affidavit or written statement must be submitted at least 30 days prior to the date such testimony and/or production of records is requested to be taken and/or produced. A copy of the affidavit or written statement shall be served on the other parties to the legal proceeding. The affidavit or written statement must:

(a) Be addressed to the Export-Import Bank of the United States, Office of the General Counsel, 811 Vermont Ave., NW., Washington, DC 20571;

(b) State the nature of the legal proceeding, including any docket number, title of the case, and the name of the administrative or adjudicative body before which the proceedings are to be heard;

(c) State the nature of the testimony or records sought;

(d) State the relevance of the information sought to the legal proceedings;

(e) State why such information can only be obtained through testimony or production of records by Ex-Im Bank personnel; and

(f) Comply with all procedures governing valid service of process.

§ 404.28 Notification of General Counsel required.

Ex-Im Bank personnel receiving a demand for testimony and/or production of records regarding information acquired in the course of their performance of official duties, or due to their official status, shall immediately notify the General Counsel of Ex-Im Bank (''General Counsel'') upon receipt of such demand. The General Counsel maintains the exclusive authority to waive the requirements of any or all sections of this subpart and reserves the right to delegate his or her authority under this subpart to other appropriate Ex-Im Bank personnel.

§ 404.29 Restrictions on testimony and production of records.

Ex-Im Bank personnel may not provide testimony and/or produce records regarding information acquired in the course of their performance of official duties, or due to their official status, in connection with any legal proceeding to which this subpart applies, without authorization by the General Counsel. Such authorization must be in writing, unless the General Counsel determines that circumstances warrant an oral authorization, and such oral authorization is subsequently documented.

§ 404.30 Factors General Counsel may consider in determining whether to authorize testimony and/or the production of records.

In determining whether to authorize Ex-Im Bank personnel to provide testimony and/or produce records regarding information acquired in the course of their performance of official duties, or due to their official status, the General Counsel may consider factors including, but not limited to, the following:

(a) Efficiency—the conservation of the time and resources of Ex-Im Bank personnel for the conduct of official business;

(b) Undue burden—whether the demand creates an undue burden upon Ex-Im Bank or is otherwise inappropriate under any applicable administrative or court rules;

(c) Appearance of bias—whether the testimony and/or production of records could result in the public perception that Ex-Im Bank is favoring one party over another, or advocating the position of a party to the proceeding;

(d) Furtherance of agency policy—whether the testimony and/or production of records is consistent with the policy and mission of the Ex-Im Bank;

(e) Prevention of fraud or injustice—whether the disclosure of the information requested is necessary to prevent the perpetration of fraud or injustice;

(f) Relevance to litigation—whether the testimony and/or production of records sought is relevant to the subject litigation;

(g) Necessity—whether the testimony and/or production of records, including a release of such *in camera*, is appropriate or necessary as determined by either the procedural rules governing the legal proceeding, or according to the relevant laws concerning privilege;

(h) Availability from another source—whether the information sought through testimony or production of records is available from another source;

(i) Violations of laws or regulations—whether the testimony and/or production of records would violate a statute, regulation, executive order, or other official directive;

(j) Classified information—whether the testimony and/or production of records would improperly reveal information classified pursuant to applicable statute or Executive Order; and

(k) Compromise of rights and interests—whether the testimony and/or production of records would compromise any of the following: law enforcement interests, constitutional rights, national security interests, foreign policy interests, or the confidentiality of commercial and/or financial information.

§ 404.31 Procedure for declining to testify and/or produce records.

Ex-Im Bank personnel receiving a demand to provide testimony and/or produce records regarding information acquired in the course of their performance of official duties, or due to their official status, and who have not received written authorization from the General Counsel to provide such information, shall:

(a) Respectfully decline to answer or appear for examination on the grounds that such testimony is forbidden by this subpart;

(b) Request the opportunity to consult with the General Counsel;

(c) Explain that only upon consultation may they be granted approval to provide such testimony;

(d) Explain that providing such testimony or records absent approval may subject the individual to criminal liability under 18 U.S.C. 641, as well as other applicable laws, and other disciplinary action; and

(e) Request a stay of the request or demand pending a determination by the General Counsel.

§ 404.32 Procedure in the event a decision concerning a demand is not made prior to the time a response to the demand is required.

If response to a demand is required before a determination has been rendered by the General Counsel, the U.S. Attorney or such other attorney as may be designated for the purpose will appear with the Ex-Im Bank personnel upon whom the demand has been made, and will furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration of the General Counsel. The court or other authority shall be requested respectfully to stay the demand pending determination by the General Counsel.

§ 404.33 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 404.32 pending a determination by the General Counsel, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel not to produce the material or disclose the information sought, the Ex-Im Bank personnel upon whom the demand has been made shall respectfully decline to comply with the demand (*United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462).

§ 404.34 Procedure for demands for testimony or production of documents regarding confidential information.

In addition to compliance with the requirements of this subpart, demands to provide testimony and/or produce records that concern information protected by the Privacy Act, 5 U.S.C. 552a, or any other authority mandating confidentiality of certain classes of records or information, must also satisfy the requirements for disclosure imposed by such authority before records may be produced or testimony given.

§ 404.35 Procedures for requests for Ex-Im Bank employees to provide expert or opinion testimony.

No Ex-Im Bank personnel may, unless specifically authorized by the General Counsel, testify in any legal proceeding as an expert or opinion witness as to any matter related to his or her duties or the functions of the Ex-Im Bank, including the meaning of Ex-Im Bank documents. Any demand for expert or opinion testimony shall comply with the policies and procedures outlined in this subpart.

§ 404.36 No private right of action.

Nothing in this subpart shall be construed as creating any right, substantive or procedural, enforceable at law or equity by a party against Ex-Im Bank or the United States.

Dated: March 15, 2006.

Howard A. Schweitzer,

General Counsel (Acting), Export-Import Bank of the United States.

[FR Doc. 06–2749 Filed 3–21–06; 8:45 am]

BILLING CODE 6690–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23476; Directorate Identifier 2005–NM–204–AD; Amendment 39–14516; AD 2006–06–07]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Fokker Model F.28 Mark 0070 and 0100 airplanes. This AD requires inspecting the main landing gear (MLG) main fitting for cracks, and repair if necessary. This AD also requires installing a placard and revising the airplane flight manual to include procedures to prohibit the application of brakes during backward movement of the airplane. This AD results from a report that an MLG main fitting failed on an airplane that was braking while moving backward. We are issuing this AD to detect and correct cracks in the MLG main fitting, which could result in reduced structural integrity of the MLG main fitting.

DATES: This AD becomes effective April 26, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 26, 2006.

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

Contact Fokker Services B.V., Technical Services Dept, P.O. Box 231,

2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Fokker Model F.28 Mark 0070 and 0100 airplanes. That NPRM was published in the **Federal Register** on January 4, 2006 (71 FR 293). That NPRM proposed to require inspecting the main landing gear (MLG) main fitting for cracks, and repair if necessary. That NPRM proposed also to require installing a placard and revising the airplane flight manual (AFM) to include procedures to prohibit the application of brakes during backward movement of the airplane.

Comments

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

Explanation of Changes to the NPRM

We have added the model number in paragraph (f). We have also corrected a typographical error in paragraph (g) of the AD. We have also corrected the service bulletin name in paragraphs (i) and (j) of the AD, and corrected the service bulletin reference in paragraphs (h), (i) and (j) of the AD.

Conclusion

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

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	2	$65	$0	$130	11	$1,430
AFM Revision and Placard Installation	1	65	0	65	11	715

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–06–07 Fokker Services B.V.: Amendment 39–14516. Docket No. FAA–2005–23476; Directorate Identifier 2005–NM–204–AD.

Effective Date

(a) This AD becomes effective April 26, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0070 and 0100 airplanes, certificated in any category; equipped with Messier-Dowty main landing gears (MLGs).

Unsafe Condition

(d) This AD results from a report that an MLG main fitting failed on an airplane that was braking while moving backward. We are issuing this AD to detect and correct cracks

in the MLG main fitting, which could result in reduced structural integrity of the MLG main fitting.

Compliance

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

Airplane Flight Manual (AFM) Revision and Placard Installation

(f) Within 14 days after the effective date of this AD, amend the Limitations section of the Fokker F.28 AFM to prohibit application of brakes during backward movement of the airplane. This may be done by inserting a copy of this AD in the AFM.

Note 1: When a statement to prohibit application of brakes during backward movement of the airplane has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(g) Within 14 days after the effective date of this AD, affix a placard on the pedestal, next to the parking brake handle, having the following wording: ''APPLICATION OF BRAKES DURING BACKWARD MOVEMENT IS PROHIBITED.''

Inspection and Corrective Action

(h) At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD: Do an eddy current inspection of the MLG main fittings and repair before further flight as applicable, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin F100–32–106, including Appendices A through C and excluding Appendix D, dated February 18, 2005, except as provided by paragraphs (i) and (j) of this AD.

(1) For airplanes on which an inspection has not been done in accordance with Messier-Dowty Service Bulletin F100–32–104, Revision 2, dated October 30, 2003: Within 3 months after the effective date of this AD.

(2) For airplanes on which an inspection has been done in accordance with Messier-Dowty Service Bulletin F100–32–104, Revision 2, dated October 30, 2003: Within 2,000 flight cycles since the last inspection done in accordance with the service bulletin or within 3 months after the effective date of this AD, whichever occurs later.

Exceptions to the Service Bulletin

(i) Where Messier-Dowty Service Bulletin F100–32–106, including Appendices A through C and excluding Appendix D, dated February 18, 2005, specifies contacting the manufacturer for repair: Before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority—The Netherlands (CAA–NL) (or its delegated agent).

(j) Although Messier-Dowty Service Bulletin F100–32–106, including Appendices A through C and excluding Appendix D, dated February 18, 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Parts Installation

(k) As of the effective date of this AD, no person may install, on any airplane, a Messier-Dowty MLG, unless it has been inspected/repaired according to paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(m) Dutch airworthiness directives 2002–115/2, dated October 8, 2004; and NL–2005–002, dated April 14, 2005, also address the subject of this AD.

Material Incorporated by Reference

(n) You must use Messier-Dowty Service Bulletin F100–32–106, including Appendices A through C and excluding Appendix D, dated February 18, 2005; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Fokker Services B.V., Technical Services Dept, P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 10, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–2674 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23475; Directorate Identifier 2005–NM–117–AD; Amendment 39–14518; AD 2006–06–09]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all EMBRAER Model ERJ 170 airplanes. This AD requires revising the Airworthiness Limitations section (ALS) of the airplane maintenance manual (AMM) to include new, specific maintenance tasks related to the incorporation of a new horizontal stabilizer actuator. This AD also requires revising the ALS of the AMM to include revised repetitive inspection intervals for certain tasks in the maintenance plan related to the aileron and flap/slat flight controls system. This AD results from safety assessments of the aileron and flap/slat flight controls system, conducted after the type certification of the airplane, which showed that some dormant faults did not comply with the safety assessment criteria. We are issuing this AD to prevent failure of the aileron and flap/slat controls system, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective April 26, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 26, 2006.

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

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton,

Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all EMBRAER Model ERJ 170 airplanes. That NPRM was published in the **Federal Register** on January 4, 2006 (71 FR 290). That NPRM proposed to require revising the Airworthiness Limitations section (ALS) of the airplane maintenance manual (AMM) to include new, specific maintenance tasks related to the incorporation of a new horizontal stabilizer actuator. That NPRM also proposed to require revising the ALS of the AMM to include revised repetitive inspection intervals for certain tasks in the maintenance plan related to the aileron and flap/slat flight controls system.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the single comment received. The commenter, the Airline Pilots Association, International, supports the NPRM.

Conclusion

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

Costs of Compliance

This AD will affect about 42 airplanes of U.S. registry. The required actions will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $2,730, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–06–09 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14518. Docket No. FAA–2005–23475; Directorate Identifier 2005–NM–117–AD.

Effective Date

(a) This AD becomes effective April 26, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from safety assessments of the aileron and flap/slat flight controls system, conducted after the type certification of the airplane, which showed that some dormant faults did not comply with the safety assessment criteria. We are issuing this AD to prevent failure of the aileron and flap/slat controls system, which could result in reduced controllability of the airplane.

Compliance

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

Airplane Maintenance Manual (AMM) Revisions

(f) Within 30 days after the effective date of this AD: Revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness in the EMBRAER 170 AMM to include revisions to the maintenance tasks and repetitive inspections intervals, and applicable corrective actions that are approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Departmento de Aviacao Civil (DAC), (or its delegated agent). The revisions in paragraphs (f)(1) and (f)(2) of this AD are approved methods.

(1) EMBRAER Temporary Revision (TR) 1–3 of the EMBRAER 170 Maintenance Review Board (MRB) Report MRB–1621, dated December 27, 2004, to the EMBRAER 170 AMM includes revised repetitive inspection intervals for MRB tasks 27–11–00–002 (Operational Check of Control-Yoke Disconnect System) and 27–11–11–001 (Operational Check of Aileron Override Unit). Where the revision requires a compliance time that is less than 700 flight hours after the effective date of this AD, do the action within 700 flight hours after the effective date of this AD. Thereafter, except as provided by paragraph (h) of this AD, no alternative inspection intervals may be approved.

(2) The revised EMBRAER 170 AMM maintenance tasks identified in Table 1 of this AD include new maintenance tasks and inspections related to the incorporation of a new horizontal stabilizer actuator. Thereafter, except as provided by paragraph (h) of this AD, no alternative tasks or inspections may be approved.

TABLE 1.—EMBRAER 170 AMM MAINTENANCE TASKS

AMM chapter	Task Nos.	Date	Title
27–11–03	27–11–03–710–801–A, 27–11–03–720–801–A	January 25, 2005	Aileron Control Cable–Adjustment/Test.
27–41–01	27–41–01–210–801–A, 27–41–01–220–801–A, 27–41–01–220–802–A.	January 25, 2005	Horizontal Stabilizer Trim Actuator—Inspection/Check.
27–81–01	27–81–01–710–801–A	January 25, 2005	Slat Actuator—Adjustment/Test.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Brazilian airworthiness directive 2005–03–02, effective April 20, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use EMBRAER Temporary Revision 1–3 of the EMBRAER 170 Maintenance Review Board Report MRB–1621, dated December 27, 2004, to the EMBRAER 170 Airplane Maintenance Manual, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 10, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–2675 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22383; Directorate Identifier 2005–NM–102–AD; Amendment 39–14520; AD 2006–06–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100B SUD, 747–200B, 747–300, 747–400, and 747–400D Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 747–100B SUD, 747–300, 747–400, and 747–400D series airplanes; and Model 747–200B series airplanes having a stretched upper deck. This AD requires repetitively inspecting for cracking or discrepancies of the fasteners in the tension ties, shear webs, and frames at body stations 1120 through 1220, and performing related investigative and corrective actions if necessary. This AD results from new reports of severed tension ties, as well as numerous reports of cracked tension ties, broken fasteners, and cracks in the frame, shear web, and shear ties adjacent to tension ties for the upper deck. We are issuing this AD to detect and correct cracking of the tension ties, shear webs, and frames of the upper deck, which could result in rapid decompression of the airplane.

DATES: This AD becomes effective April 26, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 26, 2006.

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

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747–100B SUD, 747–300, 747–400, and 747–400D series airplanes; and Model 747–200B series airplanes having a stretched upper deck (SUD). That NPRM was published in the **Federal Register** on September 12, 2005 (70 FR 53743). That NPRM proposed to require repetitively inspecting for cracking or discrepancies of the fasteners in the tension ties, shear webs, and frames at body stations 1120 through 1220, and related investigative and corrective actions if necessary.

Comments

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

Request To Discuss Special Freighters

The Boeing Company (hereafter referred to in this AD as ''Boeing'') requests that we revise the Discussion section of the proposed AD to refer to Boeing Model 747–200B(SUD)SF, 747–300SF, and 747–400SF airplanes. Boeing notes that the Discussion section mentions Boeing 747–200B series airplanes modified under a Boeing-

owned supplemental type certificate (STC) to include a SUD, but doesn't mention STCs and service bulletins related to converting airplanes into a special freighter configuration. Boeing requests that we add a paragraph to the Discussion section stating that certain ''Boeing Model 747–200B(SUD), 747–300, and 747–400 series airplanes'' have been modified to a special freighter configuration and are subject to the identified unsafe condition for the tension ties and frames at body stations (BS) 1120 through 1220 only. Boeing contends that tension ties and frames at BS 880 through 1100 on the airplanes configured as special freighters are more robust and are not subject to the unsafe condition. Boeing states that adding such a paragraph would clarify that special freighters are affected by the AD, but that tension ties and frames at BS 880 through 1100 are not subject to the AD.

We agree that a special freighter that is converted from a Boeing 747–200B series airplane having a SUD or from a Boeing 747–300 or –400 series airplane is subject to the unsafe condition addressed by this AD. These airplanes are already included in the applicability of this AD. However, we do not agree with Boeing's request to refer to tension ties and frames at BS 880 through 1100 on the airplanes converted to special freighters because we have not indicated that the tension ties and frames in this area are subject to the AD. The Discussion section of the proposed AD is not restated in the final rule, so we have made no change with regard to Boeing's request.

Request To Clarify Effect on Other ADs

Boeing also requests that we clarify paragraph (b) of the proposed AD to state that, for special freighters that are converted from a Boeing 747–200B series airplane having a SUD or from a Boeing 747–300 or –400 series airplane, the inspections in this AD will not terminate the inspections of structural significant item (SSI) F–19A of Boeing Document No. D6–35022, ''Supplemental Structural Inspection Document (SSID),'' Revision G, dated December 2000 (hereafter referred to in this AD as ''the SSID'') for BS 880 through 1100.

We agree that this AD does not terminate the inspections of SSI F–19A for BS 880 through 1100. As we stated previously, tension ties and frames in BS 880 through 1100 are not subject to this AD. For clarification, we have revised paragraph (b) of this AD to state that the provisions of that paragraph apply only to areas inspected in accordance with this AD.

Request To Clarify Compliance Times

Boeing also requests that we revise paragraph (f)(1) of the proposed AD to state that the provision in that paragraph applies only to airplanes identified in Boeing Alert Service Bulletin 747–53A2507. Boeing states that, without this clarification, operators may question whether paragraph (f)(1) applies to all airplanes versus all airplanes specified in Boeing Alert Service Bulletin 747–53A2507.

We do not agree with Boeing's request to clarify the compliance times. Paragraph (f) of this AD refers to paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2507 as the source for compliance times, ''except as provided by paragraphs (f)(1), (f)(2), and (f)(3) of this AD.'' The compliance times in that service bulletin are also summarized in the preamble of the NPRM. We explained in the preamble of the NPRM, under the heading ''Clarification of Compliance Time for Stage 1 Inspections,'' that this AD applies to certain airplanes not subject to the inspection in Boeing Service Bulletin 747–53–2483. Paragraph (f)(1) is intended to clarify the applicable compliance time for the Stage 1 inspections for these airplanes. We find that no further clarification of the compliance times is needed.

Request To Correct Typographical Error

Boeing also requests that we revise paragraph (c) of the proposed AD to refer to Model 747–200B series airplanes instead of ''Model 747–200 series airplanes.'' We agree. A typographical error resulted in the omission of the letter ''B'' from the model. We have revised paragraph (c) of this AD accordingly.

Clarification of Applicability

The proposed AD specified that the actions therein would be applicable to ''Boeing Model 747–100B SUD, 747–300, 747–400, and 747–400D series airplanes; and Model 747–200[B] series airplanes having a stretched upper deck; certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005.'' The current effectivity listing in the service bulletin includes airplanes up to and including line number 1358. However, the service bulletin also specifies that airplanes after line number 1358 are affected. Therefore, for clarification, we have revised this AD to apply to all airplanes of the affected models.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Conclusion

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

Interim Action

We consider this AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Costs of Compliance

There are about 622 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Stage 1 Inspection per inspection cycle.[1]	19	$65	$1,235, per inspection cycle	76	$93,860, per inspection cycle.[1]

ESTIMATED COSTS—Continued

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Stage 2 Inspection, per inspection cycle.	83	65	$5,395, per inspection cycle	76	$410,020, per inspection cycle.

[1] Completing the initial Stage 2 inspection ends the repetitive Stage 1 inspections.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–06–11 Boeing: Amendment 39–14520. Docket No. FAA–2005–22383; Directorate Identifier 2005–NM–102–AD.

Effective Date

(a) This AD becomes effective April 26, 2006.

Affected ADs

(b) For the areas inspected in accordance with this AD, accomplishing the requirements of paragraph (f) of this AD terminates the corresponding inspection requirements for the upper deck tension ties as required by paragraphs (c) and (d) of AD 2004–07–22, amendment 39–13566, as those paragraphs apply to inspections of structural significant item (SSI) F–19A, as identified in Boeing Document No. D6–35022, ''Supplemental Structural Inspection Document,'' Revision G, dated December 2000. All other requirements of AD 2004–07–22 continue to apply.

Applicability

(c) This AD applies to all Boeing Model 747–100B SUD, 747–300, 747–400, and 747–400D series airplanes; and Model 747–200B series airplanes having a stretched upper deck; certificated in any category.

Unsafe Condition

(d) This AD results from new reports of severed tension ties, as well as numerous reports of cracked tension ties, broken fasteners, and cracks in the frame, shear web, and shear ties adjacent to tension ties for the upper deck. We are issuing this AD to detect and correct cracking of the tension ties, shear webs, and frames of the upper deck, which could result in rapid decompression of the airplane.

Compliance

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

Repetitive Inspections and Corrective Actions

(f) Do repetitive detailed and high frequency eddy current inspections, as applicable, for cracking or discrepancies of the fasteners in the tension ties, shear webs, and frames at body stations 1120 through 1220, and related investigative and corrective actions as applicable, by doing all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005, except as provided by paragraphs (g) and (h) of this AD. Do the initial and repetitive Stage 1 and Stage 2 inspections at the applicable times specified in Paragraph 1.E., ''Compliance,'' of the service bulletin, except as provided by paragraphs (f)(1), (f)(2), and (f)(3) of this AD. Any applicable investigative and corrective actions must be done before further flight. Doing the initial Stage 2 inspection ends the repetitive Stage 1 inspections.

(1) For any airplane not identified in and subject to inspections in accordance with Boeing Service Bulletin 747–53–2483: Do the initial Stage 1 inspection in accordance with Boeing Alert Service Bulletin 747–53A2507 before the accumulation of 8,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever is later.

(2) Where Paragraph 1.E., ''Compliance,'' of the service bulletin specifies a compliance time relative to the original issue date of the service bulletin, this AD requires compliance before the specified compliance time after the effective date of this AD.

(3) For any airplane that reaches the applicable compliance time for the initial Stage 2 inspection (as specified in Table 1, Compliance Recommendations, under paragraph 1.E. of the service bulletin) before reaching the applicable compliance time for the initial Stage 1 inspection: Doing the initial Stage 2 inspection eliminates the need to do the Stage 1 inspection.

Exception to Corrective Action Instructions

(g) If any discrepancy; including but not limited to cracking, or broken, loose, or missing fasteners; is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005, specifies to contact Boeing for appropriate action: Before further flight, repair the discrepancy using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

No Reporting Requirement

(h) Although Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005, specifies reporting inspection findings to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on March 9, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–2677 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22426; Directorate Identifier 2005–NM–105–AD; Amendment 39–14519; AD 2006–06–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes. This AD requires a one-time inspection to determine whether any steel doubler (small or large) is installed at the lower forward and upper aft corners of the fuselage cutout at main entry doors (MEDs) number 3. Depending on the results of this inspection, this AD also requires repetitive inspections for cracks of the skin, bearstrap, and small steel doubler (if installed) at the applicable corner or corners of the fuselage cutouts, and related investigative/corrective actions if necessary. This AD also provides the optional terminating action for the repetitive inspections of installing a large steel doubler at the affected corners. This AD results from reports of cracks in the skin and bearstrap at the upper aft corner and at the lower forward corner of the fuselage cutout at MEDs number 3. We are issuing this AD to detect and correct cracks in the skin, bearstrap, and small steel doubler (if installed), which could propagate and result in rapid decompression of the airplane.

DATES: This AD becomes effective April 26, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 26, 2006.

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

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes. That NPRM was published in the **Federal Register** on September 16, 2005 (70 FR 54677). That NPRM proposed to require a one-time inspection to determine whether any steel doubler (small or large) is installed at the lower forward and upper aft corners of the fuselage cutout at main entry doors (MEDs) number 3. Depending on the results of this inspection, that AD also proposed to require repetitive inspections for cracks of the skin, bearstrap, and small steel doubler (if installed) at the applicable corner or corners of the fuselage cutouts, and related investigative/corrective actions if necessary. That AD also proposed the optional terminating action for the repetitive inspections of installing a large steel doubler at the affected corners.

Comments

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

Request To Revise Paragraph (h) to Include Reference to Small Steel Doubler

Boeing requests that we revise paragraph (h) ''Inspection for Steel Doublers'' of the NPRM to include instructions to inspect the small steel doubler (if installed) for cracks. Boeing points out that this inspection is

included in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2512, Revision 1, dated August 11, 2005, which was referenced as the appropriate source of service information for accomplishing the required actions. Boeing suggests that we revise the second sentence of paragraph (h) to read: * * * ''Do the applicable inspections for cracks in the skin, bearstrap, and small steel doubler (if installed) at the upper aft and lower forward corner.''

We agree. The sentence, as it appeared in the NPRM, omitted the reference to the small steel doubler. Adding the words that Boeing suggests will ensure that the inspections are accomplished in accordance with the procedures in the service bulletin. We have changed paragraph (h) of the AD to include the reference to inspecting the small steel doubler for cracks.

Request To Clarify Paragraph (m) Regarding Installing Small Steel Doublers in Production

Boeing asks that we clarify paragraph (m) ''Parts Installation'' of the NPRM regarding the installation of small steel doublers in production. Boeing states that the wording of paragraph (m) in the NPRM, ''* * * no person shall install on any airplane a small steel doubler at the lower forward corner * * *'' should read ''no person shall install on any airplane a small steel doubler at the lower forward corner as a repair for cracks. * * *'' Boeing points out that airplanes currently in production have the small steel doubler installed.

We agree. The paragraph as it is written in the NPRM implies that the small steel doubler may not be installed at any time after the effective date of the AD, including in production. Our intent was to ensure that the small steel doubler is not installed as a repair for cracks or as a modification. We have changed paragraph (m) of the AD to include the words ''as a repair for cracks or as a modification at the lower forward corner of the fuselage cutout at MEDs number 3, in accordance with Boeing Service Bulletin 747–53–2218.''

Request To Clarify Note 2 Regarding Installing Small Steel Doublers in Production

Boeing requests that we clarify Note 2, which follows paragraph (m) of the NPRM, regarding the installation of small steel doublers at the lower forward corner. Boeing states that Note 2 should add the words ''as a repair for cracks'' in reference to installing the small steel doublers. Boeing explains that airplanes currently in production have a small steel doubler installed.

We partially agree. We agree that the AD should not prohibit installing a small steel doubler in production. We disagree with revising Note 2, because the note refers only to installation of the small steel doubler done in accordance with Boeing Service Bulletin 747–53–2218, Revision 4, dated November 9, 1989. Therefore, Note 2 does not affect the installation of the small steel doubler in production. We have not changed the AD in this regard.

Request To Clarify Paragraph (g)(2)

Boeing requests that we clarify paragraph (g)(2), under the heading ''Inspection for Steel Doublers,'' to ensure that the upper aft corners of all airplanes are inspected, regardless of which steel doubler (if any) is installed at the lower forward corner. Boeing explains that the paragraph currently reads, ''For all doubler configurations except those specified in paragraph (g)(1) of this AD. * * *'' Boeing notes that paragraph (g)(1) includes airplanes with either a large steel doubler or no steel doubler installed at the lower forward corner. Therefore, Boeing states that it can be interpreted that an airplane that does not have a steel doubler, or that has a large steel doubler installed at the lower forward corner, does not require inspection at the upper aft corner. Boeing points out that Boeing Alert Service Bulletin 747–53A2512, Revision 1, requires an inspection at the upper aft corner, regardless of which steel doubler (if any) is installed at the lower forward corner.

We partially agree. We agree that the upper aft corner requires inspection, regardless of which steel doubler (if any) is installed at the lower forward corner. We disagree with revising paragraph (g)(2) because paragraph (g) of the NPRM already requires the inspection of both the lower forward and upper aft corners for all airplanes that are subject to the requirements of the AD. Paragraphs (g)(1) and (g)(2) do not describe inspections; they describe what to do according to the results of inspection required by paragraph (g). These two paragraphs apply to the configuration of specific cutout corners that will be revealed by the inspection required by paragraph (g), as noted by the phrase ''no further action is required by this AD for that cutout corner'' in paragraph (g)(1). Paragraph (g)(1) applies to the corner if the inspection in paragraph (g) reveals a cutout corner where a large steel doubler is installed or a lower forward cutout corner where no steel doubler is installed. Paragraph (g)(2) applies to cutout corners with doubler configurations other than those described in paragraph (g)(1). We have not changed the AD in this regard.

Request To Refer to Additional Service Bulletin in ''Other Relevant Rulemaking'' Section

Boeing requests that we list Boeing Service Bulletin 747–53A2500 (which the commenter indicates is part of AD 2004–07–22, amendment 39–13566 (69 FR 18250, April 17, 2004) in the ''Other Relevant Rulemaking'' section. Boeing states that this section already refers to Boeing Service Bulletin 747–53–2349, dated June 27, 1991, which applies to Boeing Model 747–100, –200, and –300 airplanes that don't have a nose cargo door. Boeing points out that Boeing Service Bulletin 747–53A2500, dated December 21, 2004, is similar to Boeing Service Bulletin 747–53–2349, except that it applies to Boeing Model 747–400 airplanes, and airplanes with a nose cargo door.

We partially agree. We agree that this AD is related to Boeing Service Bulletin 747–53A2500 as well as to Boeing Service Bulletin 747–53–2349. We note that Boeing Service Bulletin 747–53A2500 is not the subject of AD 2004–07–22, but is the subject of another NPRM, Docket No. FAA–2005–22526, Directorate Identifier 2005–NM–008–AD (70 FR 56860, September 29, 2005). That NPRM proposes the inspection of the MEDs number 3 cutout surround structure for certain airplanes affected by this AD. However, since the ''Other Relevant Rulemaking'' section of the preamble does not reappear in the final rule, we have not changed the AD in this regard.

Request To Revise the ''Relevant Service Information'' Section To Refer to a Detailed Visual Inspection

Boeing requests that we revise the fifth sentence in the second paragraph of the ''Relevant Service Information'' section of the NPRM to read: ''do a general visual inspection to determine which steel doubler (if any) is installed and to determine if there are any previous repair trimouts in the skin and/or bearstrap. If a small steel doubler is installed, do a detailed visual inspection of the steel doubler for cracks. If previous repair trimouts are present, do an X-ray inspection for cracks in the skin or bearstrap at the edges of the trimouts, or alternatively remove the small steel doubler and do a high-frequency eddy current (HFEC) inspection of the edges of the trimouts for cracks.'' Boeing states that in Boeing Alert Service Bulletin 747–53A2512, Revision 1, a general visual inspection is used to determine which steel doubler, if any, is installed. If a small

doubler is installed, a detailed visual inspection is used to detect cracks. Boeing further states that a general visual inspection is also used to determine if previous repair trimouts are present in the skin and/or bearstrap, and if there are, an X-ray inspection is used to inspect the edges of the trimouts.

We partially agree. We note that the description of inspection requirements provided by the commenter is mostly accurate, except that the service bulletin also specifies a general visual inspection for cracks in the small steel doubler in addition to a detailed visual inspection. Step (3) of Figures 1, 9, 13, and 21 in Boeing Service Bulletin 747–53A2512, Revision 1, which is the appropriate source of information for the referenced inspection, specifies a general visual inspection of the small steel doubler for cracks. Therefore, the ''Relevant Service Information'' section of the NPRM accurately reflects the service bulletin. In addition, that section of the preamble does not reappear in the final rule. We have not changed the AD in this regard.

Request To Change Reference to Inspection in Summary

Boeing requests that we change the phrase ''one-time inspection to determine whether any steel doubler (large or small) is installed * * *'' to read ''general visual inspection to determine.'' Boeing explains that a general visual inspection is done each time the inspection is accomplished. The follow-on actions depend on what type of steel doubler (if any) is installed at the time. Boeing further explains that neither Boeing Alert Service Bulletin 747–53A2512, Revision 1, nor the instructions in the body of the NPRM specify a one-time inspection.

We disagree with changing the Summary section to include a reference to a ''general visual inspection.'' The summary is intended to give an overview of the proposed requirements, and is not intended to define the inspection methods. The remainder of the preamble to the NPRM and the body of the AD define the inspection methods. In addition, users of ADs have requested in the past that we include in the Summary section whether their obligation in fulfilling the inspection requirements of the AD will include repetitive or one-time inspections; we intended to propose a one-time inspection in the NPRM and stated so in the summary. The NPRM proposed to prohibit any future installation of a small steel doubler at the lower forward corner as a repair for cracks or as a modification; we have determined that further inspection for doubler configuration is not necessary. We have not changed the AD in this regard.

Request To Postpone Issuing AD

Boeing forwarded a comment from an airplane operator. The airplane operator requests that we postpone issuing the AD until the manufacturer improves the availability of repair kits, and after the manufacturer clarifies the modification procedures referenced in Boeing Alert Service Bulletin 747–53A2512, Revision 1. Boeing states that the clarification to the procedures is due to be released in a new structural repair manual section.

We disagree with postponing the AD based on parts availability. We have identified an unsafe condition on the affected airplanes, and this unsafe condition must be corrected within the compliance times specified in the AD. In addition to these kits being available from Boeing, these kits may also be fabricated by the operator, as the repair doublers are machined from steel sheets. We will consider alternative methods of compliance in accordance with the procedures in paragraph (n) of this AD. We have not changed the AD in this regard.

Request To Revise Cost Estimate

The Air Transport Association and Northwest Airlines point out that the cost estimate in the NPRM includes only the time it would take for operators to verify whether large, small, or no doubler(s) exist at the lower forward and upper aft corners. The commenters state that most airplanes currently in operation that are affected by the NPRM are likely to have small doublers installed at both lower forward and upper aft corners. The commenters state that the 1-work-hour figure per airplane that is cited in the NPRM gives a misleading view of the scope of the work associated with performing the additional inspection tasks for airplanes that have doublers installed. Therefore, the commenters recommend that the labor estimate be adjusted to 12 work-hours, as specified in Boeing Alert Service Bulletin 747–53A2512, Revision 1.

We do not agree. The costs of compliance discussed in NPRMs represent only the time necessary to perform the specific actions actually proposed by the NPRM. These figures typically do not include on-condition costs, such as related investigative and corrective actions following an initial inspection finding; nor do they include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Although we agree that the work-hours required for an operator to comply with the requirements of the AD may be more than the hours reflected in the cost estimate, we cannot predict on-condition costs for the entire fleet. We have not changed the AD in this regard.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Conclusion

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

Costs of Compliance

There are about 710 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
One-time general visual inspection	1	$65	None	$65	170	$11,050

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–06–10 Boeing: Amendment 39–14519. Docket No. FAA–2005–22426; Directorate Identifier 2005–NM–105–AD.

Effective Date

(a) This AD becomes effective April 26, 2006.

Affected ADs

(b) Installing a large steel doubler at the lower forward corner of the fuselage cutout at main entry doors (MEDs) number 3 in accordance with AD 92–27–04, amendment 39–8437, terminates the inspection requirements of this AD for that area only.

Applicability

(c) This AD applies to all Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of cracks in the skin and bearstrap at the upper aft corner and at the lower forward corner of the fuselage cutout at MEDs number 3. We are issuing this AD to detect and correct cracks in the skin, bearstrap, and small steel doubler (if installed), which could propagate and result in rapid decompression of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2512, Revision 1, dated August 11, 2005.

Inspection for Steel Doublers

(g) Prior to the accumulation of 10,000 total flight cycles or within 1,000 flight cycles after the effective date of this AD, whichever occurs later: Do a general visual inspection of the lower forward and upper aft corners of the fuselage cutout at MEDs number 3 to determine whether a small, a large, or no steel doubler is installed, and do the applicable action in paragraphs (g)(1) and (g)(2) of this AD. Do all actions in accordance with the service bulletin.

(1) If a large steel doubler is installed, or if no steel doubler is installed at the lower forward corner, no further action is required by this AD for that cutout corner, except the requirements of paragraph (m) of this AD continue to apply.

Note 1: Boeing Alert Service Bulletin 747–53A2512 refers to Boeing Service Bulletin 747–53–2218, Revision 5, dated March 26, 1992, as an additional source of service information for inspecting airplanes that are determined by the inspection required by paragraph (g) of this AD to have no steel doubler (large or small) installed at the lower forward corner of the fuselage cutout at MEDs number 3.

(2) For all doubler configurations except those specified in paragraph (g)(1) of this AD, do the actions in paragraph (h) of this AD at the applicable time in that paragraph.

Inspections for Cracks, and Related Investigative and Corrective Actions

(h) For the doubler configurations specified in paragraph (g)(2) of this AD, at the times specified in paragraph 1.E. ''Compliance'' of the service bulletin (except as required by paragraph (i) of this AD): Do the applicable inspections for cracks in the skin, bearstrap, and small steel doubler (if installed), at the upper aft corner and at the lower forward corner of the fuselage cutout at MEDs number 3, and do all applicable related investigative actions and corrective actions before further flight by doing all the actions in accordance with the service bulletin. Repeat the inspections thereafter at the intervals specified in paragraph 1.E, ''Compliance'' of the service bulletin. Where the service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, do the repair using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(i) Where the service bulletin specifies compliance times relative to the date of issuance of the service bulletin, this AD requires compliance relative to the effective date of this AD.

Terminating Action

(j) Installing a large steel doubler in accordance with the service bulletin terminates the repetitive inspection requirements of this AD for the corner of the fuselage cutout at MEDs number 3 at which the large steel doubler is installed.

No Reporting Required

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

Actions Done in Accordance With Original Issue of Service Bulletin

(l) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–53A2512, dated May 5, 2005, are acceptable for compliance with the corresponding actions of this AD.

Parts Installation

(m) After the effective date of this AD, no person may install on any airplane a small steel doubler as a repair for cracks or as a modification at the lower forward corner of the fuselage cutout of MEDs number 3, in accordance with Boeing Service Bulletin 747–53–2218.

Note 2: Although AD 92–27–04, amendment 39–8437, has a terminating action of installing a small steel doubler in accordance with Boeing Service Bulletin 747–53–2218, that action is not allowed after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(o) You must use Boeing Alert Service Bulletin 747–53A2512, Revision 1, dated August 11, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 9, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–2676 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 530

[Docket No. 2006N–0106]

New Animal Drugs; Adamantane and Neuraminidase Inhibitor Anti-influenza Drugs; Extralabel Animal Drug Use; Order of Prohibition

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order prohibiting the extralabel use of anti-influenza adamantane and neuraminidase inhibitor drugs in chickens, turkeys, and ducks. We are issuing this order based on evidence that extralabel use of these anti-influenza drugs in chickens, turkeys, and ducks will likely cause an adverse event in humans.

DATES: This rule becomes effective June 20, 2006. Submit written or electronic comments on this document by May 22, 2006.

ADDRESSES: You may submit comments, identified by Docket No 2006N–0106, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kim Young, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9207, e-mail: *kim.young@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. AMDUCA

The Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA) (Public Law 103–396) was signed into law on October 22, 1994. It amended the Federal Food, Drug, and Cosmetic Act (the act) to permit licensed veterinarians to prescribe extralabel uses of approved animal and human drugs in animals. In the **Federal Register** of November 7, 1996 (61 FR 57732), we published the implementing regulations (codified at part 530 (21 CFR part 530)) for AMDUCA. The sections regarding prohibition of extralabel use of drugs in animals are found at sections 530.21, 530.25, and 530.30. These sections describe the basis for issuing an order prohibiting an extralabel drug use in animals and the procedure to be followed in issuing an order of prohibition.

We may issue a prohibition order if we find that extralabel use in animals presents a risk to the public health. Under § 530.3(e), this means that we have evidence that demonstrates that the use of the drug has caused or likely will cause an adverse event.

Section 530.25 provides for a public comment period of not less than 60 days. It also provides that the order of prohibition will become effective 90 days after the date of publication, unless we revoke the order, modify it, or extend the period of public comment. The list of drugs prohibited from extralabel use is found in § 530.41.

B. Adamantane and Neuraminidase Inhibitor Anti-influenza Drugs

An influenza type A pandemic is a global outbreak of disease that occurs when a new influenza A virus subtype appears or ''emerges'' in the human population, causes serious illness in people, and then spreads easily from person to person worldwide (Ref. 1). Pandemics are different from seasonal outbreaks or ''epidemics'' of influenza. Seasonal outbreaks are caused by

subtypes of influenza viruses that already circulate among people. In contrast, pandemics are caused by new subtypes, by subtypes that have never circulated among people, or by subtypes that have not circulated among people for a long time (Ref. 1). Historically, many influenza epidemics in people have originated in birds. The human influenza pandemic of 1918 is thought to have developed in birds (Ref. 2) and the current pandemic threat is coming from an avian influenza outbreak that started by affecting poultry flocks in Southeast Asia (Ref. 3) with subsequent outbreaks detected on other continents (Ref. 4). The influenza A (H5N1 subtype) causing the outbreak in Asia has already demonstrated the ability to transmit zoonotically from birds to people (Ref. 3). Many experts believe the H5N1 subtype of the influenza A virus will eventually be capable of spreading easily from person to person, creating a new pandemic (Ref. 5).

The first line of defense for any influenza outbreak in people is vaccination (Ref. 6). Influenza vaccines are among the most important interventions in an influenza epidemic, but are expected to have their optimal effect only if the vaccine is adequately matched to the circulating viral strain. Confronted with a fast moving influenza pandemic, there may not be enough time to characterize the virus, develop a vaccine, distribute it widely, and administer it to enough people to make a difference (Ref. 1). If this situation occurs in the United States, we will become heavily dependent upon our second line of defense, which is the administration of anti-influenza drugs. There are currently four approved antiviral drugs, in two classes, for the treatment or prevention of influenza A in humans. These are the adamantanes (amantadine and rimantadine) and the neuraminidase inhibitors (oseltamivir and zanamivir) (Ref. 7). They are not approved for use in the treatment or prevention of influenza in animals.

Anti-influenza drugs are intended to be administered when appropriate to people that are clinically ill with influenza to reduce the time to improvement of influenza symptoms. In addition, they may be administered to people exposed to influenza, to prevent clinical illness. Although these drugs are not a substitute for vaccination, in selected circumstances they have also been included in outbreak control strategies. To limit the impact of a pandemic influenza outbreak it will be critical that effective antiviral therapies be available for treatment and prophylaxis of disease in humans. For this reason the World Health Organization (WHO) considers these drugs critically important antimicrobials for humans (Ref. 8).

FDA is concerned regarding the ease with which influenza A viruses can become drug-resistant as a result of selective pressure induced by the use of anti-influenza drugs. FDA is also concerned that the extralabel use of these drugs in animals is likely to lead to the emergence of resistant strains of influenza A, particularly when such extralabel use could involve administration to large numbers of animals. If these drug-resistant strains infect humans, it is likely that the approved anti-influenza drugs will no longer be effective for treating or preventing disease in those people. Therefore, FDA is issuing an order prohibiting the extralabel use of adamantane and neuraminidase inhibitor anti-influenza drugs in chickens, turkeys, and ducks because, as discussed in sections II and III of this document, the agency has determined that such extralabel use likely will cause an adverse event and as such presents a risk to the public health. FDA may expand the list of animal species affected as new data becomes available.

II. Adamantanes

The adamantanes are the older of the two classes of anti-influenza drugs, the oldest drug having been on the market for over 30 years. Adamantane-resistant influenza viruses have been observed to emerge readily after exposure to these drugs in both humans and animals (Ref. 9). Moreover, such viruses can be transmitted from human to human without any loss of pathogenicity (Refs. 9 and 10). Chicken flocks in China and other parts of Asia have reportedly been treated with amantadine starting in the late 1990's (Refs. 8, 11, and 12). Amantadine resistance among H5 avian influenza viruses was 0 percent in both North America and Southeast Asia before this time. Between 2000 and 2004, amantadine resistance in H5 avian influenza viruses in Southeast Asian flocks rose to 31 percent while remaining at 0 percent in North America (Ref. 12). Although the H5N1 subtype of influenza A has not yet been found in the United States, some reports indicate that since 2003, many human and most avian isolates tested in other countries are now resistant to amantadine and rimantadine (Refs. 9 and 10).

Genetic studies have shown that the resistance of influenza A viruses (isolated from both birds and people) to amantadine and rimantadine, including resistance in the H5N1 subtype, is associated with an amino acid substitution in the M2 protein (Refs. 9 and 10). More specifically, genetic studies have shown that adamantane-resistant H5N1 virus isolated from both birds and people in Southeast Asia has an amino acid substitution at position 31 of the M2 protein (Ref. 9). This suggests that when the H5N1 influenza virus moved from birds to people it carried with it the amino acid substitution resulting in adamantane resistance in humans.

Birds are regarded as the main reservoir and source of influenza A viruses for mammals, including humans (Ref. 13). Chickens, ducks, turkeys, guinea fowl, quail, pheasants, and other birds are susceptible, but disease outbreaks most frequently occur in chickens and turkeys (Ref. 14). Avian influenza viruses are categorized as to their ability to cause disease in chickens and are referred to as having either low or high pathogenicity. High pathogenicity avian influenza viruses identified more recently in Asia have exhibited increased virulence for chickens with some strains causing severe disease in ducks (Ref. 15). Reports indicate that H5N1 isolates from Asia replicate and transmit efficiently in ducks and can cause effects that range from complete absence of clinical disease to severe disease and death (Ref. 16).

In the United States, chickens, turkeys, and ducks are raised commercially in large numbers and in close confinement. Based on surveys conducted by the U.S. Department of Agriculture, the total inventory of live chickens and turkeys present on U.S. farms at any given time is approximately 2 billion and 93 million birds, respectively (Ref. 17). In 2005, there were an estimated 9 billion chickens, 248 million turkeys, and 28 million ducks slaughtered in the United States (Ref. 18). Each time an influenza A virus is exposed to an anti-viral drug within an individual infected animal or human there is a chance that a drug resistant virus will emerge. The greater the number of infected individuals exposed to anti-viral drugs the greater the number of opportunities for resistance to emerge. The large number of birds that could potentially be treated at a given time within a typical poultry production facility would result in a large number of individual animals exposed to anti-viral drug thereby substantially increasing the chances of selection for drug-resistant viral mutants. In addition, mass medication of birds (e.g., via drinking water) is likely to result in inconsistencies in dosing levels contributing further to the emergence of resistance. Furthermore, close confinement would likely

accelerate the spread of drug-resistant viruses between birds.

Due to evidence indicating that the use of adamantanes in chicken flocks in Asia likely contributed to resistance emergence, FDA believes that the use of these drugs in U.S. chicken flocks would likely result in resistance emergence here as well. In addition, since turkeys and ducks are also susceptible to avian influenza and are often raised under similar husbandry conditions as chickens, FDA believes that the use of adamantanes in turkeys and ducks would also likely result in resistance emergence. Furthermore, the recent cases in Southeast Asia demonstrate that zoonotic subtypes of influenza A, such as H5N1 that have become resistant to the adamantanes, are still capable of transmission to humans. Therefore, FDA has concluded that the extralabel use of the adamantane class of drugs in chickens, turkeys, and ducks will likely cause an adverse event and thus presents a risk to the public health.

III. Neuraminidase Inhibitors

The neuraminidase inhibitor drugs (oseltamivir and zanamivir) are a newer class of drugs, first approved for treatment of influenza in humans in 1999. Although neuraminidase inhibitors appear to be associated with a lower frequency of resistance emergence than the adamantanes (Ref. 19), emergence of influenza A resistance to oseltamivir during treatment has been documented in humans. For example, oseltamivir-resistant viral strains have been detected in up to 16 percent of children with human influenza A (H1N1) who have received oseltamivir (Ref. 20) and recent reports from Viet Nam describe two human patients who contracted avian influenza A (H5N1) and subsequently died of the infection while receiving oseltamivir therapy (Ref. 21). Oseltamivir-resistant strains were isolated from both of these patients (Ref. 21). Although data are limited regarding clinical emergence of resistance to zanamivir (which has been used much less in humans than oseltamivir), mutant virus with reduced susceptibility to zanamivir was occasionally observed to emerge in immunocompromised patients infected with influenza virus after treatment with zanamivir or oseltamivir (Ref. 22). In addition, *in vitro* studies have shown that exposure of influenza viruses to increasing concentrations of zanamivir have resulted in viral mutations conferring reduced susceptibility to the drug (Ref. 23). Furthermore, cross-resistance—where resistance to one drug means the virus would be resistant to the other—has been observed between zanamivir-resistant and oseltamivir-resistant influenza virus mutants generated *in vitro* (Refs. 23, 24, and 25). Based on this information, FDA believes that extralabel use of either neuraminidase inhibitor drug (oseltamivir or zanamivir) is likely to increase the risk of emergence and spread of drug-resistant influenza virus.

As seen with the adamantane class of drugs, concerns have been raised that use of the neuraminidase inhibitors in poultry will similarly lead to the emergence of influenza A virus that is more resistant to neuraminidase inhibitors (Ref. 8). FDA is not aware of studies that have investigated whether the use of these drugs in poultry is associated with the emergence of influenza A virus that is resistant to neuraminidase inhibitors. However, FDA believes the reports of resistance cited previously combined with the evidence of resistance to the adamantane class reported in both poultry and humans indicate that resistance to the neuraminidase inhibitor drugs is likely to emerge with their use in poultry.

While some reports indicate that mutations conferring resistance to the neuraminidase inhibitors have generally been associated with reduced viral fitness and transmissibility (Refs. 19 and 26), studies have found that some oseltamivir-resistant influenza A strains were transmissible among ferrets (Refs. 26 and 27). Therefore, although the data regarding neuraminidase-inhibitor-resistant influenza A are limited, FDA believes this data combined with data on the transmissibility of adamantane-resistant influenza A are adequate to conclude that if zoonotic influenza A were to emerge in U.S. poultry and became resistant to the neuraminidase-inhibitors, it is likely that such virus would be transmissible to humans.

The ''adverse event'' associated with extralabel use of neuraminidase inhibitor anti-influenza drugs in chickens, turkeys, and ducks is therefore the same as that discussed earlier with regard to extralabel use of adamantanes. The agency's basis for prohibiting extralabel uses in chickens, turkeys, and ducks of neuraminidase inhibitor anti-influenza drugs is also the same as that for adamantanes. That is, the extralabel use of neuraminidase inhibitor anti-influenza drugs in chickens, turkeys, and ducks likely will contribute to the emergence of drug resistance in the influenza A virus and compromise human therapy. Furthermore, given that some reports indicate that many of the human and avian influenza A (H5N1) isolates tested since 2003 have been reported to be resistant to the adamantane drugs (Refs. 9 and 10), and because H5N1 may occur in the Unites States, it is particularly important that steps be taken to preserve the effectiveness of the neuraminidase inhibitor class of drugs. Therefore, the agency is acting in the interest of the public health and prohibiting the extralabel use of neuraminidase inhibitor anti-influenza drugs in chickens, turkeys, and ducks.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Order of Prohibition

Therefore, I hereby issue the following order under §§ 530.21 and 530.25. We find that extralabel use of anti-influenza A drugs of the adamantane and neuraminidase inhibitor classes of drugs in chickens, turkeys, and ducks likely will cause an adverse event which constitutes a finding that extralabel use of these drugs presents a risk to the public health. Therefore, we are prohibiting the extralabel use of anti-influenza drugs of the adamantane and neuraminidase inhibitor classes of drugs in chickens, turkeys, and ducks.

VI. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**). You may view them between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. CDC Web site: *http://www.cdc.gov/flu/pandemic/keyfacts.htm*, March 2, 2006.

2. Taubenberger, J.K., et al., ''Characterization of the 1918 Influenza Virus Polymerase Genes,'' *Nature*, vol. 437, pp. 889–893, 2005.

3. WHO Web site: *http://www.who.int/csr/disease/avian_influenza/avian_faqs/en/index.html#whatis*, March 2, 2006.

4. OIE Update on Avian Influenza in Animals (Type H5); 20 February, 2006: *http://www.oie.int/downld/*

AVIAN%20INFLUENZA/A__AI-Asia.htm, March 2, 2006.

5. Pan American Health Organization Strategic and Operational Plan for Responding to Pandemic Influenza (draft), September 23, 2005.

6. CDC Morbidity and Mortality Weekly Report, vol. 54, RR–8, 2005.

7. FDA/CDER Web site: *http://www.fda.gov/cder/drug/antivirals/influenza/default.htm*, March 2, 2006.

8. Joint FAO/OIE/WHO statement: ''Use of Antiviral Drugs in Poultry, a Threat to Their Effectiveness for The Treatment of Human Avian Influenza,'' November 11, 2005, WHO web site: *http://www.who.int/foodsafety/micro/avian__antiviral/en/index.html*, March 2, 2006.

9. Bright, R.A., et al., ''Incidence of Adamantane Resistance Among Influenza A (H3N2) Viruses Isolated Worldwide From 1994 to 2005: A Cause For Concern,'' *Lancet*, vol. 366, pp. 1175–1181, 2005.

10. Wong, S.S.Y., et al., ''Avian Influenza Virus Infections in Humans,'' *Chest*, vol. 129, pp. 156–168, 2006.

11. Cyranoski, D., ''China's Chicken Farmers Under Fire For Antiviral Abuse,'' *Nature*, vol. 435, pp. 1009, 2005.

12. Ilyushina, N.A., et al., ''Detection of Amantadine-Resistant Variants Among Avian Influenza Viruses Isolated in North America and Asia,'' *Journal of Virology*, vol. 341, pp. 102–106, 2005.

13. Webster, R.G., ''The Importance of Animal Influenza for Human Disease,'' *Vaccine*, vol. 20, pp. S16–S20, 2002.

14. FAO Animal Health Special Report: *http://www.fao.org/ag/againfo/subjects/en/health/diseases-cards/avian.html*, March 2, 2006.

15. Swayne, D.E., ''Occupational and Consumer Risks From Avian Influenza Viruses,'' Developments in Biologicals, vol. 124, pp. 85–90, 2006.

16. Sturm-Ramirez, K.M., et al., ''Are Ducks Contributing to the Endemicity of Highly Pathogenic H5N1 Influenza Virus in Asia?,'' *Journal of Virology*, vol. 79, pp. 11269–11279, 2005.

17. USDA / National Agricultural Statistics Service, 2002 Census of Agriculture.

18. USDA / National Agricultural Statistics Service, January 31, 2006 report.

19. Institute of Medicine of the National Academies, Knobler, S.L., et al., editors, Workshop summary: ''The Threat of Pandemic Influenza. Are We Ready?'' 2005. *http://www.nap.edu/books/0309095042/html*, March 2, 2006.

20. WHO Writing Committee, ''Avian Influenza A (H5N1) Infection in Humans,'' *The New England Journal of Medicine*, vol. 353, pp. 1374–1385, 2005.

21. de Jong, M.D., et al., ''Oseltamivir Resistance During Treatment of Influenza A (H5N1) Infection,'' *The New England Journal of Medicine*, vol. 353, pp. 2667–2672, 2005.

22. Ison, M.G., ''Recovery of Drug-Resistant Influenza Virus from Immunocompromised Patients: A Case Series,'' *Journal of Infectious Diseases*, vol. 193, pp. 760–764, 2006.

23. U.S. Prescribing Information for Tamiflu (Roche Pharmaceuticals, December 2005) and Relenza (GlaxoSmithKline, April 2003).

24. Jackson, D., et al., ''Characterization of Recombinant Influenza B Viruses With Key Neuraminidase Inhibitor Resistance Mutations,'' *Journal of Antimicrobial Chemotherapy*, vol. 55, pp. 162–169, 2005.

25. Mishin, V. P., ''Susceptibilities of Antiviral-Resistant Influenza Viruses to Novel Neuraminidase Inhibitors,'' *Antimicrobial Agents and Chemotherapy*, vol. 49, pp. 4515–4520, 2005.

26. Moscona, A., ''Neuraminidase Inhibitors for Influenza,'' *The New England Journal of Medicine*, vol. 353, pp. 1363–1373, 2005.

27. Moscona, A., ''Oseltamivir Resistance—Disabling Our Influenza Defenses,'' *The New England Journal of Medicine*, vol. 353, pp. 2633–2636, 2005.

List of Subjects in 21 CFR Part 530

Administrative practice and procedure, Advertising, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, 21 CFR part 530 is amended as follows:

PART 530—EXTRALABEL DRUG USE IN ANIMALS

■ 1. The authority citation for 21 CFR part 530 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 360b, 371, 379e.

■ 2. In § 530.41, add and reserve paragraph (c) and add paragraph (d) to read as follows:

§ 530.41 Drugs prohibited for extralabel use in animals.

* * * * *

(c) [Reserved]

(d) The following drugs, or classes of drugs, that are approved for treating or preventing influenza A, are prohibited from extralabel use in chickens, turkeys, and ducks:

(1) Adamantanes.

(2) Neuraminidase inhibitors.

Dated: March 14, 2006.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 06–2689 Filed 3–20–06; 11:00 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 2006N–0100]

Medical Devices; Immunology and Microbiology Devices; Classification of Reagents for Detection of Specific Novel Influenza A Viruses

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying Reagents for detection of specific novel influenza A viruses into class II (special controls). Special controls that will apply to the device are the guidance document entitled, ''Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses'' and limitations of distribution of these reagents. The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990, the Food and Drug Administration Modernization Act of 1997, and the Medical Device User Fee and Modernization Act of 2002. The agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document that is a special control for this device.

DATES: This rule becomes effective April 21, 2006. The classification was effective February 3, 2006.

FOR FURTHER INFORMATION CONTACT: Claudia Gaffey, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0496.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require

premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of FDA's regulations.

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

In accordance with section 513(f)(1) of the act, FDA issued a notice on January 26, 2006, classifying the Centers for Disease Control and Prevention (CDC)'s Influenza A/H5 (Asian lineage) Virus Real-time RT-PCR Primer and Probe Set in class III, because it was not substantially equivalent to a class I or class II device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On January 26, 2006, CDC submitted a petition requesting classification of the Influenza A/H5 (Asian lineage) Virus Real-time RT-PCR Primer and Probe Set under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II.

In accordance with section 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the CDC's Influenza A/H5 (Asian lineage) Virus Real-time RT-PCR Primer and Probe Set can be classified in class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of safety and effectiveness of the device. The device is assigned the generic name, ''Reagents for detection of specific novel influenza A viruses.'' The Influenza A/H5 (Asian lineage) Virus Real-time RT-PCR Primer and Probe Set is intended for the in vitro qualitative detection of Influenza A/H5 (Asian lineage) virus RNA either directly in patient respiratory specimens or in viral cultures for the presumptive laboratory identification of Influenza A/H5 (Asian lineage) virus. Testing with the Influenza A/H5 (Asian lineage) Virus Real-time RT-PCR Primer and Probe Set should be used in conjunction with other laboratory testing and clinical observations for the following indications: (1) Providing epidemiological information for the surveillance of human infection with Influenza A/H5 (Asian lineage) virus; (2) identifying patients who may be infected with Influenza A/H5 (Asian lineage) virus based on clinical and epidemiological risk factors.

FDA has identified the risks to health associated with this type of device as improper patient management and public health response, laboratory-acquired infection, and potential influenza A virus reassortment. Failure of testing with reagents for detection of specific novel influenza A viruses to correctly identify a specific novel influenza A virus, or failure to properly interpret test results obtained with these reagents, could lead to incorrect patient management decisions and inappropriate public health responses. Also, the use of reagents for detection of specific novel influenza A viruses without appropriate biosafety equipment and containment could result in laboratory-acquired infection and viral reassortment.

The class II special controls guidance document provides information on how to meet premarket (510(k)) submission requirements for the device, including recommendations on validation of performance characteristics and labeling. It also addresses postmarket measures to assure the continued safety and effectiveness of the device by identifying changes in performance that may result from mutation in the virus that the device is intended to detect or changes in the prevalence of human infection. FDA believes that following the class II special controls guidance document and the additional special control specified in the classification regulation generally addresses the risks to health identified in the previous paragraph. Therefore, on February 3, 2006, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this classification by adding § 866.3332.

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for reagents for detection of specific novel influenza A viruses will need to address the issues covered in the special controls guidance, which contains recommendations for the contents of premarket notification submissions including performance testing, labeling, and postmarket data collection and analysis; and will have to limit distribution of these reagents to laboratories with: (1) Experienced personnel who have training in standardized molecular testing procedures and expertise in viral diagnosis, and (2) appropriate biosafety equipment and containment. However, regarding the issues covered in the special controls guidance, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, however, FDA has determined that premarket notification is necessary because FDA review of performance characteristics, test methodology, and labeling to satisfy requirements of 21 CFR 807.87(e), will provide reasonable assurance that acceptable levels of performance for both safety and effectiveness will be addressed before marketing clearance. Thus, persons who intend to market this type of device must submit to FDA a premarket notification containing information on the reagents for detection of specific novel influenza A viruses before marketing the device.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because classification of these devices into class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the final rule will not have a significant impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) is not required. FDA concludes that the special controls guidance document contains information collection provisions that are subject to review and clearance by OMB under the PRA. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of the guidance document entitled, ''Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses''; the notice contains an analysis of the paperwork burden for the guidance.

VI. Reference

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

1. Petition from CDC, dated January 26, 2006.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

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

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

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

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

■ 2. Section 866.3332 is added to subpart D to read as follows:

§ 866.3332 Reagents for detection of specific novel influenza A viruses.

(a) *Identification.* Reagents for detection of specific novel influenza A viruses are devices that are intended for use in a nucleic acid amplification test to directly detect specific virus RNA in human respiratory specimens or viral cultures. Detection of specific virus RNA aids in the diagnosis of influenza caused by specific novel influenza A viruses in patients with clinical risk of infection with these viruses, and also aids in the presumptive laboratory identification of specific novel influenza A viruses to provide epidemiological information on influenza. These reagents include primers, probes, and specific influenza A virus controls.

(b) *Classification.* Class II (special controls). The special controls are:

(1) FDA's guidance document entitled ''Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses.'' See § 866.1(e) for information on obtaining this document.

(2) The distribution of these devices is limited to laboratories with experienced personnel who have training in standardized molecular testing procedures and expertise in viral diagnosis, and appropriate biosafety equipment and containment.

Dated: March 10, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–2742 Filed 3–21–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–06–011]

RIN 1625–AA00

Safety Zone: Camp Rilea Offshore Small Arms Firing Range; Warrenton, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone offshore of Camp Rilea, Warrenton, Oregon. Small arms training and fire will be conducted within this zone, and a safety zone is needed to ensure the safety of persons and vessels operating in this area during the specified periods. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his/her designated representative.

DATES: This rule is effective from 5 a.m. to 8 p.m. from March 10, 2006 through March 20, 2006. This rule is enforced during daylight hours from March 10, 2006 through March 20, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–06–011 and are available for inspection or copying at Coast Guard Sector Portland, 6767 North Basin Avenue, Portland, OR

97217–3992 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Shadrack Scheirman, Chief Port Operations, USCG Sector Portland, 6767 N. Basin Ave., Portland, OR 97217, telephone number (503) 240–9311.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying the effective date of this rule would be contrary to the public interest since immediate action is necessary to minimize potential danger to the public from small arms fire during the live fire training. Such training is necessary in order to ensure Coast Guard crews are qualified to carry Crew Served Weapons required to fulfill their Military and Homeland Security responsibilities.

In order to maintain an increased maritime security posture, the Coast Guard has increased training requirements for the carriage of weapons during homeland security operations. The crews required to carry out homeland security operations must be trained to perform their operational obligations.

Publishing an NPRM and delaying the effective date of this rule would be contrary to the public interest since immediate action is necessary to minimize potential danger to the public from small arms fire during the live fire training. Such training is necessary in order to ensure Coast Guard crews are qualified to carry Crew Served Weapons required to fulfill their Military and Homeland Security responsibilities.

Background and Purpose

Changes in Coast Guard policy and procedures require small boat crews to train on and fire crew served weapons from a vessel. In order to ensure the safety of persons and vessels operating in vicinity of this training from March 10, 2006 through March 20, 2006 a safety zone will be in effect during all small arms firing evolutions.

Discussion of Rule

This safety zone will be in effect to ensure the safety of persons and vessels in the vicinity of the live fire training. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his/her designated representative. A Coast Guard vessel will be on scene to ensure that the public is aware that the firing exercises are in progress and that the firing area is clear of traffic before firing commences. All persons and vessels shall comply with the instructions of the Captain of the Port or his/her designated on-scene U.S. Coast Guard representative. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). This rule only affects a small area for a limited duration. The proposed regulations have been tailored in scope to impose the least impact on maritime interests, yet provide the level of safety necessary for such an event.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to anchor, fish or transit through the zone during daylight hours from March 10, 2006 through March 20, 2006. The Coast Guard expects a minimal economic impact on a substantial number of small entities because the zone is in effect during daylight hours only for 10 days, there is little commercial activity in this area during the month of March, and vessels will be able to freely transit the areas outside of the safety zone.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Categorical Exclusion is provided for temporary safety zones of less than one week in duration. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A temporary § 165.T13–004 is added to read as follows:

§ 165.T13–004 Safety Zone; Camp Rilea Offshore Small Arms Firing Range, Warrenton, Oregon

(a) *Location.* The following area is established as a safety zone: the waters bounded by the following coordinates: 46°10′00″ N, 124°11′15″ W following an imaginary line east to 46°09′00″ N 124°02′48″ W then south to 46°06′30″ N 124°01′30″ W following the west to 46°03′00″ N 124°11′15″ W then back to the point of origin.

(b) *Regulations.* (1) In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

(2) A Coast Guard vessel will be on-scene to ensure that the public is aware that the firing exercises are in progress and that the firing area is clear of traffic before firing commences.

(c) *Enforcement period.* This rule will be enforced during daylight hours from March 10, 2006 through March 20, 2006.

(d) The Captain of the Port will broadcast status updates for this safety zone by Marine Safety Radio Broadcast on VHF Marine Band Radio Channel 22 (157.1 MHz) and through the means required under 5 U.S.C. 553.

Dated: March 10, 2006.

Patrick G. Garrity,

Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.

[FR Doc. 06–2747 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP St. Petersburg 06–034]

RIN 1625–AA00

Safety Zone for St Petersburg; Tampa Bay, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters within Tampa Bay, Florida in the vicinity of the St Petersburg Municipal Yacht Basin. The safety zone is needed to ensure the safety of all mariners during the St Petersburg Grand Prix. This rule is necessary to provide for the safety of life on the navigable waters of the United States.

DATES: This rule is effective from 9 a.m. on March 30, 2006, through 8 p.m. on April 2, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP St. Petersburg 06–034] and are available for inspection or copying at Coast Guard Sector St Petersburg, Prevention Department, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BM1 Charles Voss at Coast Guard Sector St. Petersburg, Prevention Department, (813) 228–2191, Ext. 8307.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The

necessary details for the race and the location of the safety zone surrounding it were not provided with sufficient time remaining to publish an NPRM. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to minimize potential danger to the public and participants during the auto race. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction along with Coast Guard assets on scene who will also provide notice of the safety zone to mariners.

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

Background and Purpose

The City of St. Petersburg and Honda Motor Company are sponsoring the St. Petersburg Grand Prix auto race from March 30, 2006 through April 2, 2006. Portions of the race course run adjacent to the St Petersburg Municipal Yacht Basin. The nature of high speed automobiles in the close proximity to the waterway presents a hazard to mariners and rescue personnel in the area. Honda Motor Company has taken extreme measures to ensure safety of all involved; 15 foot high concrete and steel walls have been erected to minimize the risk of automobiles entering the water. However, should an accident occur rescue personnel will need unrestricted access to the wreckage. In past events there have been a high number of vessels anchored in close proximity to the seawall to view the event, that could have impeded rescue operations. This safety zone is being established to make certain that the area near the seawall remains clear of spectator vessels, thus ensuring the safety of life in the navigable waters of the United States during this event.

Discussion of Rule

The safety zone encompasses waters within Tampa Bay, Florida in the vicinity of the St Petersburg Municipal Yacht Basin. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port or his designated representative. This zone is effective from 9 a.m. on March 30, 2006, through 8 p.m. on April 2, 2006.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary because the safety zone will only be in effect for a limited period of time. Moreover, vessels may enter with the express permission of the Captain of the Port of St Petersburg or his designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit Tampa Bay near St Petersburg Municipal Yacht Basin, Florida from 9 a.m. on March 30, 2006, through 8 p.m. on April 2, 2006. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for a limited period of time in an area where vessel traffic is extremely low. Additionally, vessel traffic may be allowed to enter the safety zone with the expressed permission of the Captain of the Port of St Petersburg or his designated representative.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary section 165.T07–034 is added to read as follows:

§ 165.T07–034 Safety Zone; Tampa Bay Florida.

(a) *Regulated Area.* The Coast Guard is establishing a temporary safety zone on the waters of Tampa Bay, Florida in the vicinity of the St. Petersburg Municipal Yacht Basin within approximately 100 feet of the sea wall. This encompasses all waters between the seawall and an imaginary line drawn from the following positions. (All coordinates referenced use datum: NAD 83):

27°46′05″ N., 082°37′33″ W.
27°46′01″ N., 082°37′46″ W.
27°46′03″ N., 082°37′50″ W.
27°46′06″ N., 082°37′54″ W.
27°46′17″ N., 082°37′54″ W.

(b) *Definitions.* The following definition applies to this section:

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP), Coast Guard Sector St. Petersburg, in the enforcement of the safety zone.

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

(d) *Enforcement Period.* This rule will be enforced on March 30, 2006 from 12 p.m. to 6 p.m. and on March 31, 2006 through April 2, 2006 from 8 a.m. to 6 p.m. daily.

(e) *Dates.* This rule is effective from 9 a.m. on March 30, 2006, through 8 p.m. on April 2, 2006.

Dated: February 23, 2006.

J.A. Servidio,

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

[FR Doc. 06–2748 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0124, FRL–8040–6]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a request from the Indiana Department of Environmental Management (IDEM) to revise the Indiana State Implementation Plan (SIP). The revision consists of the repeal of 326 IAC 6–1, and its replacement by new articles 326 IAC 6.5 and 326 IAC 6.8. 326 IAC 6.5 contains particulate matter emission limitations for sources in all counties in Indiana, with the exception of Lake County. Sources located in Lake County are addressed in 326 IAC 6.8. The revision does not change any control requirements or any other provisions in 326 IAC 6–1.

DATES: This rule is effective on May 22, 2006, unless EPA receives adverse written comments by April 21, 2006. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. EPA–R05–OAR–2006–0124, by one of the following methods:

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

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

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

Fax: (312)886–5824.

Mail: You may send written comments to:

John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S.

Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

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

Instructions: Direct your comments to RME ID No. EPA–R05–OAR–2006–0124. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Jonathan Nichols, Life Scientist, at (312) 353–7942 before visiting the Region 5 office. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Jonathan Nichols, Life Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–7942, *nichols.jonathan@epa.gov.*

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

I. General Information
A. How can I get copies of this document and other related information?
B. How and to whom do I submit comments?
II. Background
III. What are the revisions that the State requests be incorporated into the SIP?
IV. What action is EPA taking today?
V. Statutory and Executive Order Reviews

I. General Information

A. How can I get copies of this document and other related information?

1. The Regional Office has established an electronic public rulemaking file available for inspection at RME under ID No. EPA–R05–OAR–2006–0124, and a hard copy file which is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include CBI or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. 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 a.m. to 4:30 p.m. excluding Federal holidays.

2. Electronic Access. You may access this **Federal Register** document electronically through the regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register,** the Government's legal newspaper, and that are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to whom do I submit comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 Air Docket EPA–R05–OAR–2006–0124'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

II. Background

A. When did the State submit the requested rule revisions to EPA?

IDEM submitted the requested rule revisions related to particulate matter emissions limitations on September 1, 2005.

B. Did Indiana hold public hearings for each of these rule revisions?

IDEM held public hearings for the rule revisions that were submitted on

January 5, 2005, February 2, 2005, and May 4, 2005.

C. Did IDEM receive any adverse comments to these changes?

IDEM did not receive any comments concerning 326 IAC 6–1 (regarding repealing the rule), or 326 IAC 6.5 and 326 IAC 6.8 (regarding the new articles).

III. What are the revisions that the State requests be incorporated into the SIP?

The State has requested the following revisions: the repeal of 326 IAC 6–1; the addition of 326 IAC 6.5, Particulate Matter Limitations for each county with the exception of Lake County; and the addition of 326 IAC 6.8, Particulate Matter Limitations for Lake County. This revision renumbers and simplifies the organizational structure of the rule. The revision does not change any control requirements or any other provisions in 326 IAC 6–1. The revisions are described in more detail below:

Particulate Matter Organizational Changes

IDEM has made a few revisions related to the particulate matter rule. These are: repealing 326 IAC 6–1; adding particulate matter limitations for each county, with the exception of Lake County at 326 IAC 6.5; and adding particulate matter emissions limitations for Lake County at 326 IAC 6.8. IDEM has done this in order to streamline future rule amendment processes by having a separate section for each company. This rule eliminates the submittal of hundreds of pages of paper for one emission limit amendment.

IV. What action is EPA taking today?

We are approving revisions to the Indiana SIP in one area: to repeal 326 IAC 6–1, and to replace it with 326 IAC 6.5 ''Particulate Matter Limitations for all counties with the exception of Lake County,'' and 326 IAC 6.8 ''Particulate Matter Limitations for Lake County.''

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective May 22, 2006 without further notice unless we receive relevant adverse written comments by April 21, 2006. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective May 22, 2006.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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

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

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

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

Executive Order 13132: Federalism

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

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

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

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

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

Congressional Review Act

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 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, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 17, 2006.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations 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 P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(173) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(173) The Indiana Department of Environmental Management submitted amendments to Indiana's State Implementation Plan on September 1, 2005. The amendments include the repeal of 326 IAC 6–1, which is replaced with new articles 326 IAC 6.5, ''Particulate Matter Limitations for all Counties Except Lake County'' and 326 IAC 6.8, ''Particulate Matter Limitations for Lake County.''

(i) Incorporation by reference. The following sections of the Indiana Administrative Code are incorporated by reference.

(A) Amendments to Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6.5 Particulate Matter Limitations Except Lake County, and Article 6.8 Particulate Matter Limitations For Lake County. Adopted by the Indiana Air Pollution Control Board on May 4, 2005. Filed with the Secretary of State on August 10, 2005 and effective on September 9, 2005. Published at Indiana Register, Volume 28, Number 12, September 1, 2005 (3454).

[FR Doc. 06–2694 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–NV–0002, FRL–8040–8]

Revisions to the Nevada State Implementation Plan, Washoe County District Board of Health

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Washoe County District Board of Health (WCDBH) portion of the Nevada State Implementation Plan (SIP). The WCDBH revisions concern particulate matter (PM–10) emissions from street sanding operations and from street sweeping operations. We are approving local rules under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on May 22, 2006 without further notice, unless EPA receives adverse comments by April 21, 2006. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2005–NV–0002, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.
- E-mail: *steckel.andrew@epa.gov.*
- Mail or deliver: Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the Nevada Division of Environmental Protection.

TABLE 1.—SUBMITTED RULES FOR DIRECT FINAL APPROVAL

Local agency	Rule No.	Rule title	Adopted	Submitted
WCDBH	040.031	Street Sanding Operations	02/27/02	08/05/02
WCDBH	040.032	Street Sweeping Operations	02/27/02	08/05/02

On February 6, 2003, the submittals of August 5, 2002 were found by operation of law to meet the completeness criteria.

B. Are there other versions of these rules?

There are no versions of Rules 040.031 and 040.032 in the SIP.

C. What is the purpose of the submitted rules?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter (PM–10), and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control emissions of PM–10.

The purposes of the new rules are as follows:

• Rule 040.031 establishes the following specifications for de-icing sand: (a) Durability index greater than 75; (b) hardness index less than 33%; (c) fines smaller than 100 mesh less than 4.0%; and (d) fines smaller than 200 mesh less than 2.5%.

• Rule 040.032 establishes the following standards for street sweeping: (a) Certified street sweepers are equipment purchased or leased after February 1, 2002; (b) equipment must be maintained in accordance with manufacturer's specifications; (c) sanding events must be followed by street sweeping within four days or as soon as weather and road conditions permit; and (d) routine street sweeping not related to sanding events must be done at least once per month.

The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). The WCDBH regulates a serious PM–10 nonattainment area; therefore, significant sources of PM–10 must apply BACM/BACT (see section 189(b)(1)(B)). Rules 040.031 and 040.032 regulate a significant source of PM–10 according to the *PM–10 State Implementation Plan for the Truckee Meadows Air Basin* (August 2002) (2002 Plan) and must fulfill the requirements of BACM/BACT.

Guidance and policy documents that we used to help evaluate enforceability requirements consistently include the following:

• *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.

• *Guidance Document for Correcting Common VOC & Other Rule Deficiencies,* EPA Region IX (August 21, 2001). (The Little Bluebook)

• *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* U. S. EPA, 59 FR 41998 (August 16, 1994).

• *Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures,* EPA–450/2–92–004 (September 1992).

• *Guidance Document for Selecting Antiskid Materials Applied to Ice- and Snow-Covered Roadways,* EPA–450/3–90–007 (July 1991).

B. Do the rules meet the evaluation criteria?

We believe WCDBH Rules 040.031 and 040.032 are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling the requirements of BACM/BACT.

The rules are discussed further in the TSD.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules WCDBH Rules 040.031 and 040.032 because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by April 21, 2006, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on May 22, 2006. This will incorporate these rules into the federally enforceable SIP.

However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by April 21, 2006, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on May 22, 2006. This will incorporate these rules into the federally enforceable SIP.

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.

III. 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. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 16, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations 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 DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraph (c)(55) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(55) The following plan revision and regulations were submitted on August 5, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Washoe County District Board of Health.

(*1*) Rules 040.031 and 040.032, adopted on February 27, 2002.

* * * * *

[FR Doc. 06–2697 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VT–19–1222c; FRL–8037–2]

Approval and Promulgation of Air Quality Implementation Plans; Vermont Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Notice of administrative change.

SUMMARY: EPA is publishing this action to provide the public with notice of the update to the Vermont State Implementation Plan (SIP) compilation. In particular, materials submitted by Vermont that are incorporated by reference (IBR) into the Vermont SIP are being updated to reflect EPA-approved revisions to Vermont's SIP that have occurred since the last update. In this action EPA is also notifying the public of the correction of a certain typographical error within the table in the regulations, and modification of the **Federal Register** citations to reflect the first page of the applicable **Federal Register** document.

DATES: This action is effective March 22, 2006.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, New England Regional Office (Region 1), One Congress Street, Suite 1100, Boston, MA 02114–2023; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Donald Cooke, Environmental Scientist, at the above EPA New England Region address or at (617) 918–1668 or by e-mail at *cooke.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address its unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968),

EPA revised the procedures for incorporation by reference (IBR) federally-approved SIPs, as a result of consultations between EPA and the Office of Federal Register (OFR). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997 **Federal Register** document. On September 8, 2000 (65 FR 54413), EPA published a **Federal Register** beginning the new IBR procedure for Vermont. In this document, EPA is doing the following:

1. Announcing the update to the Vermont IBR material as of February 10, 2006.

2. Making a correction in the table to § 52.2370(c), entry ''Chapter 5, Subchapter V, Section 5–501.''—The correct year for **Federal Register** volume 62 is 1997.

3. Correcting typographical errors listed in § 52.2370(c), (d) and (e) tables.—Modifying the **Federal Register** citation to reflect the beginning page of the preamble as opposed to the page of the regulatory text.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs, and corrects typographical errors. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification (and typographical corrections) only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect chart entries.

Statutory and Executive Order Reviews

A. General Requirements

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.*).

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act, pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Vermont SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this ''Identification of plan'' reorganization update action for Vermont.

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: February 14, 2006.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart UU—Vermont

■ 2. Section 52.2370 is amended by revising paragraphs (b), (c), (d) and (e) to read as follows:

§ 52.2370 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) and (d) of this section with an EPA approval date prior to February10, 2006, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after February 10, 2006, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 1 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the State Implementation Plan as of February 10, 2006.

(3) Copies of the materials incorporated by reference may be inspected at the New England Regional Office of EPA at One Congress Street, Suite 1100, Boston, MA 02114–2023; the EPA, Air and Radiation Docket and Information Center, Air Docket (Mail Code 6102T), Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20460 and the National Archives and Records Administration. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) EPA approved regulations.

EPA-APPROVED VERMONT REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Chapter 5—Air Pollution Control				
Subchapter I. Definitions				
Section 5–101	Definitions	07/29/93	04/22/98, 63 FR 19825	Definitions IBR'd into the Vermont SIP are numbered consecutively by EPA, and do not necessarily correspond to the State's assigned definition number in the Vermont State Regulation, which are re-numbered whenever definitions are added or deleted from the State Regulation.
Subchapter II. Prohibitions				
Section 5–201	Open burning prohibited	07/22/98	04/22/98, 63 FR 19825	
Section 5–202	Permissible open burning.	01/25/78	12/21/78, 43 FR 59496	
Section 5–203	Procedures for local authorities to burn natural wood.	01/25/78	12/21/78, 43 FR 59496	
Section 5–211	Prohibition of visible air contaminants.	08/12/78	04/16/82, 47 FR 16331	Except Section 5–211(3).
Section 5–221	Prohibition of pollution potential materials in fuel.	01/25/78	12/21/78, 43 FR 59496	Except Section 5–221(1)(c)(i) and Section 5–221(1)(c)(ii).
Section 5–231	Prohibition of particular matter.	11/13/81	02/26/85, 50 FR 7767	
Section 5–241	Prohibition of nuisance and odor.	01/25/78	12/21/78, 43 FR 59496	
Section 5–251	Control of nitrogen oxides emissions.	01/04/95	04/09/97, 62 FR 17084	Requires RACT for major stationary sources of NO_X.
Section 5–252	Control of sulfur dioxide emissions.	11/04/79	02/19/80, 45 FR 10775	
Section 5–253.1	Petroleum liquid storage in fixed roof Tanks.	10/29/92	04/22/98, 63 FR 19825	
Section 5–253.2	Bulk gasoline terminals	10/29/92	04/22/98, 63 FR 19825	
Section 5–253.3	Bulk gasoline plants	10/29/92	04/22/98, 63 FR 19825	
Section 5–253.4	Gasoline tank trucks	10/29/92	04/22/98, 63 FR 19825	
Section 5–253.5	Stage I vapor recovery controls at gasoline dispensing facilities.	10/29/92	04/22/98, 63 FR 19825	
Section 5–253.10	Paper coating	10/29/92	04/22/98, 63 FR 19825	
Section 5–253.12	Coating of flad wood paneling.	10/29/92	04/22/98, 63 FR 19825	
Section 5–253.13	Coating of miscellaneous metal parts.	07/29/93	04/22/98, 63 FR 19825	
Section 5–253.14	Solvent metal cleaning	07/29/93	04/22/98, 63 FR 19825	
Section 5–253.15	Cutback and emulsified asphalt.	08/02/94	04/22/98, 63 FR 19825	

EPA-APPROVED VERMONT REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Section 5–253.20	Other sources that emit volatile organic compounds.	08/03/93	04/09/97, 62 FR 17084	
Section 5–261	Control of hazardous air contaminants.	11/03/81	02/10/82, 47 FR 6014.	
Subchapter III. Ambient Air Quality Standards				
Section 5–301	Scope	12/15/90	03/05/91, 56 FR 9175	
Section 5–302	Sulfur dioxide primary	03/24/79	02/19/80, 45 FR 10775	
Section 5–303	Sulfur dioxide secondary	03/24/79	02/19/80, 45 FR 10775	
Section 5–306	PM_{10} primary and secondary standards.	11/01/90	08/01/97, 62 FR 41280	Removal of the TSP standard (Section 5–304 and 5–305) and establishment of PM_{10} standard (Section 5–306).
Section 5–307	Carbon monoxide primary and secondary.	03/24/79	02/19/80, 45 FR 10775	Formerly Section 5–306, renumbered to 5–307 when new Section 5–306 for PM_{10} was created.
Section 5–308	Ozone primary and secondary.	03/24/79	02/19/80, 45 FR 10775	Formerly Section 5–307, renumbered to 5–308 when new Section 5–306 for PM_{10} was created.
Section 5–309	Lead primary and secondary.	11/13/81	02/10/82, 47 FR 6014	Formerly Section 5–308, renumbered to 5–309 when new Section 5–306 for PM_{10} was created.
Section 5–310	Nitrogen dioxide primary and secondary.	12/15/90	03/05/91, 56 FR 9175	Formerly Section 5–309, renumbered to 5–310 when new Section 5–306 for PM_{10} was created.
Subchapter IV. Operations and Procedures				
Section 5–401	Classification of air contaminant sources.	03/24/79	02/19/80, 45 FR 10775	
Section 5–402	Written reports when requested.	03/24/79	02/19/80, 45 FR 10775	
Section 5–403	Circumvention	12/10/72	05/31/72, 37 FR 10842	
Section 5–404	Methods for sampling and FR testing of sources.	03/24/78	02/19/80, 45 FR 10775	
Section 5–405	Required air monitoring	03/24/79	02/19/80, 45 FR 10775	
Section 5–406	Required air modeling	03/24/79	02/19/80, 45 FR 10775	
Subchapter V. Review of New Air Contaminant Sources				
Section 5–501	Review of construction or modification of air contaminant sources.	09/17/86	07/17/87, 52 FR 26973	
Section 5–502	Major stationary sources and major modifications.	07/14/95	08/04/97, 62 FR 41867	
Subchapter VII. Motor Vehicle Emissions				
Section 5–701	Removal of control devices.	03/24/79	02/19/80, 45 FR 10775	
Section 5–702	Excessive smoke emissions from motor vehicles.	03/24/79	02/19/80, 45 FR 10775	
Section 5–801	Effective date	03/24/79	01/30/80, 45 FR 6781	
Tables				
Table 1	Table 1—Process weight standards.	01/25/78	12/21/78, 43 FR 59496	
Table 2	Table 2—PSD increments.	12/15/90	03/05/91, 56 FR 9175	
Table 3	Table 3—Levels of significant impact for non-attainment areas.	11/03/81	02/10/82, 47 FR 6014	
Subchapter VIII. Registration of Air Contaminant Sources				
Sections 5–801	Definitions	04/20/88	01/10/95, 60 FR 2524	

EPA-APPROVED VERMONT REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Sections 5–802	Requirement for registration.	04/20/88	01/10/95, 60 FR 2524	
Section 5–803	Registration procedure ..	04/20/88	01/10/95, 60 FR 2524	
Section 5–804	False or misleading information.	04/20/88	01/10/95, 60 FR 2524	
Section 5–805	Commencement or recommencement of operation.	04/20/88	01/10/95, 60 FR 2524	
Section 5–806	Transfer of Operation	04/20/88	01/10/95, 60 FR 2524	

(d) EPA-approved State Source specific requirements.

EPA-APPROVED VERMONT SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	Explanations
Simpson Paper Company, Centennial Mill in Gilman, Vermont.	Envrionmental Protection Regulations, Chapter 5, Air Pollution Control, Subchapter II. Section 5–251(2).	01/04/95	04/09/97, 45 FR 17084.	Administrative orders for Simpson Paper Company, in Gilman, Vermont, adopted and effective on January 4, 1995.
U.S. Samaica Corporation, in Rutland, VT.	Envrionmental Protection Regulations, Chapter 5, Air Pollution Control, Subchapter II. Section 5–253.20.	01/04/95	04/09/97, 45 FR 17084.	Administrative orders for U.S. Samaica Corporation, in Rutland, Vermont, adopted and effective on January 4, 1995.

(e) Nonregulatory.

VERMONT NON-REGULATORY

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
Notice of public hearing	Statewide	Submitted 02/03/72	06/15/72, 37 FR 11914.	(c)(1) Vermont Agency of Environmental Conservation.
Miscellaneous non-regulatory revisions to the plan.	.....	Submitted 02/25/72	5/31/72, 37 FR 10842.	(c)(2) Vermont Agency of Environmental Conservation.
Miscellaneous non-regulatory revisions to the plan.	.....	Submitted 03/03/75	01/21/76, 41 FR 3085.	(c)(4) Vermont Agency of Environmental Conservation. Deletion of Winooski sampling site for particulates and sulfur dioxide.
Plans to meet various requirements of the Clean Air Act, including Part C.	.....	Submitted 03/21/79, and 11/21/79.	01/30/80, 45 FR 6781.	(c)(9) See Plans to attain below.
Attainment Plans to meet the requirements of Part D and the Clean Air Act, as amended in 1977.	.....	Submitted 03/21/79, 11/21/79, 11/27/79, and 12/19/79.	02/19/80, 45 FR 10775.	(c)(10) Plans to attain. State of Vermont air quality and the implementation plan (March 1979). The secondary TSP standard for Barre City and a portion of the Champlain Valley Air Management Area, the carbon monoxide standard in the Champlain Valley Air Management Area and the ozone standard in Chittenden, Addison, and Windsor Counties. A program was also submitted for the review of construction and operation of new and modified major stationary sources of pollution in non-attainment areas. Certain miscellaneous provisions were also included.
A plan to provide for public, local and state involvement in federally funded air pollution control activities.	.....	Submitted 03/28/80	09/09/80, 45 FR 59314.	(c)(11) A plan to provide for public, local and state involvement in federally funded air pollution control activities.

VERMONT NON-REGULATORY—Continued

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
A plan to attain and maintain the National Ambient Air Quality Standard for lead.	.....	Submitted 06/24/80, and 11/07/80.	03/18/81, 45 FR 17192.	(c)(12) A plan to attain and maintain the National Ambient Air Quality Standard for lead. A letter further explaining the state procedures for review of new major sources of lead emissions.
A revision to the quality monitoring network.	.....	Submitted 03/21/79	10/08/80, 45 FR 66789, corrected by 03/16/81, 46 FR 16897.	(c)(13) meets the requirements of 40 CFR part 58
Narrative submittal ''Implementation Plan for the Protection of Visibility in the State of Vermont'' and ''Appendices''.	.....	Submitted 04/15/86	07/17/87, 52 FR 26973.	(c)(19) Describing procedures, notifications, and technical evaluations to fulfill the visibility protection requirements of 40 CFR part 51, subpart P.
State Implementation Plan narrative.	.....	Submitted 12/07/90, and 01/10/91.	03/05/91, 56 FR 9175.	(c)(20) State of Vermont Air Quality Implementation Plan dated November 1990.
State Implementation Plan narrative.	.....	Submitted 08/09/93	01/10/95, 60 FR 2524.	(c)(21) State of Vermont Air Quality Implementation Plan dated February, 1993. To meet the emission statement requirement of the CAAA of 1990.
Revisions to the State Implementation Plan.	.....	Submitted 02/03/93, 08/09/93, and 08/10/94.	04/22/98, 63 FR 19825.	(c)(25) State of the State Vermont: Air Quality Implementation Plan dated August 1993.
Revisions to the State Implementation Plan.	.....	Submitted 08/03/98	07/10/00, 65 FR 42290.	(c)(26) letter from VT Air Pollution Control Division dated July 28, 1998 stating a negative declaration for the aerospace coating operations CTG category.

[FR Doc. 06–2774 Filed 3–21–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R10–OAR–2006–0050; FRL–8041–6]

Approval and Promulgation of Air Quality Implementation Plans; La Grande PM_{10} Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a PM_{10} State Implementation Plan (SIP) maintenance plan revision for the La Grande, Oregon nonattainment area and to redesignate the area from nonattattainment to attainment for PM_{10}. PM_{10} air pollution is suspended particulate matter with a nominal diameter less than or equal to a nominal ten micrometers. EPA is approving the SIP revision and redesignation request because the State adequately demonstrates that the control measures being implemented in the La Grande area result in maintenance of the PM_{10} National Ambient Air Quality Standards and all other requirements of the Clean Air Act for redesignation to attainment are met.

DATES: This direct final rule will be effective May 22, 2006, without further notice, unless EPA receives adverse comments by April 21, 2006. If adverse comments are 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–R10–OAR–2006–0050, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Mail: Donna Deneen, Office of Air, Waste and Toxics, AWT–107, EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.
- Hand Delivery: EPA, Region 10 Mail Room, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Donna Deneen, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2006–0050. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.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 *http://www.regulations.gov*. 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 comment. If you send an e-mail comment directly to EPA without going through *http://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*

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, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Seattle, Washington. EPA requests that, if possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

FOR FURTHER INFORMATION CONTACT: Donna Deneen at telephone number: (206) 553–6706, e-mail address: *deneen.donna@epa.gov*, fax number: (206) 553–0110, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used, we mean EPA.

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I. General Overview

A. What Action Are We Taking?

We are taking direct final action to approve the SIP revision and redesignation request submitted by the State of Oregon Department of Environmental Quality (DEQ or State) on October 25, 2005, for the La Grande, Oregon PM_{10} nonattainment area (La Grande nonattainment area). We are approving the State's SIP revision and request for redesignation because the State adequately demonstrates that the control measures being implemented in the La Grande area result in maintenance of the PM_{10} National Ambient Air Quality Standards (NAAQS) and all other requirements of the Clean Air Act (the Act) for redesignation to attainment are met. See the Technical Support Document (TSD) accompanying this notice for further supporting documentation.

B. What Is the Background for This Action?

1. Description of the Area

La Grande is located in northeast Oregon at an elevation of 2785 feet. The area is typified by semi-arid climate where mean annual rainfall is 17.2 inches. The La Grande Urban Growth Boundary (UGB), which defines the nonattainment area boundaries, had an estimated population of 13,809 in 2000. It is expected to grow to approximately 16,391 by 2025. The city of La Grande serves as an important commercial center for northeast Oregon.

La Grande is situated at the edge of the Grande Ronde Valley, a relatively flat area nestled in a mountainous area drained by the Grande Ronde River. Because of the valley's features, La Grande can experience strong nighttime inversions that break with daytime solar heating. In the wintertime, arctic air masses frequently move into the Grande Ronde Valley. Temperatures can remain well below freezing for several weeks at a time. Winter nights are commonly clear and cool in the valley. Under these conditions, inversions can occur.

2. Nonattainment History of the La Grande Area

On July 1, 1987 (52 FR 24634), the Environmental Protection Agency (EPA) revised the National Ambient Air Quality Standards (NAAQS) for particulate matter with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). See 40 CFR 50.6. The 24-hour primary PM_{10} standard is 150 micrograms per cubic meter ($\mu g/m^3$), with no more than one expected exceedance per year over a three-year period. The annual primary PM_{10} standard is 50 $\mu g/m^3$ expected annual arithmetic mean over a three-year period. The secondary PM_{10} standards are identical to the primary standards.

By operation of law upon enactment of the 1990 Clean Air Act Amendments, La Grande, Oregon was designated ''nonattainment'' for PM_{10} and classified as moderate under section 107(d)(4)(B) and 188(a) (see 56 FR 56694 (November 6, 1991) and 40 CFR 81.338). Under subsections 188(a) and (c)(1) of the Clean Air Act, all initial moderate PM_{10} nonattainment areas had the same applicable attainment date of December 31, 1994.

The State developed a nonattainment area SIP revision designed to bring about attainment of the PM_{10} NAAQS. Oregon's Clean Air Act Part D initial PM_{10} plan (nonattainment area plan) for the La Grande PM_{10} nonattainment area was submitted on November 15, 1991. EPA approved the La Grande PM_{10} nonattainment area plan on February 15, 1995. 60 FR 8563.

In order for the La Grande nonattainment area to be redesignated to attainment for PM_{10}, a 10-year maintenance plan and redesignation request is required for the area. A SIP revision containing these elements was submitted to EPA on October 25, 2005. We are approving both these elements in this action.

3. Description of the Air Quality Problem

La Grande has not had an exceedance of the PM_{10} NAAQS for over 15 consecutive years. The last recorded exceedance occurred on January 28, 1991 (173 $\mu g/m^3$) and was the only exceedance in 1991. Because there were no exceedances in the following three years, 1992, 1993, and 1994, La Grande attained the 24-hour PM_{10} NAAQS by the Clean Air Act deadline of December 31, 1994. La Grande has not violated the annual PM_{10} NAAQS. The highest annual average PM_{10} concentration was 31.7 $\mu g/m^3$ in 1992.

PM_{10} concentrations have been measured at the same location (Willow Street) in the La Grande UGB since monitoring began in 1986. Higher levels of PM_{10} are typically a wintertime problem in La Grande due to temperature inversions that trap particulate matter emissions in the area. A combination of area sources, industrial sources, and mobile and non-

mobile sources contribute to the area's PM_{10} levels.

II. Review of Maintenance Plan

A. What Criteria Did EPA Use To Review the Maintenance plan?

Section 107(d)(3)(E) of the Act stipulates that for an area to be redesignated to attainment, EPA must fully approve a maintenance plan which meets the requirements of section 175A. Section 175A defines the general framework of a maintenance plan, which must provide for maintenance (*i.e.*, continued attainment) of the relevant NAAQS in the area for at least ten years after redesignation. The following is a list of core provisions required in an approvable maintenance plan.

1. The State must develop an attainment emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS.

2. The State must demonstrate maintenance of the NAAQS.

3. The State must verify continued attainment through operation of an appropriate air quality monitoring network.

4. The maintenance plan must include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area.

As explained below, the PM_{10} maintenance plan for the La Grande nonattainment area complies with each of these requirements.

1. Attainment Emissions Inventory (and Future Year Inventory)

The State should develop an attainment year emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS. Where the State has made an adequate demonstration that air quality has improved as a result of the control measures in the SIP, the attainment inventory will generally be an inventory of actual emissions at the time the area attained the standards. This inventory should be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should include the emissions during the time period associated with the monitoring data showing attainment.

The State submitted a PM_{10} attainment emissions inventory for 2001, a year in which no PM_{10} exceedances occurred and one of the five years used to determine the area's PM_{10} design value for the La Grande maintenance plan. Based on the 2001 worst case day emissions inventory, area sources (wood stoves, other forms of home heating, open burning, industrial and commercial heating, fugitive dust, and burning activities not categorized elsewhere) account for 54 percent of the emissions. The rest are attributed to major industry, onroad sources and nonroad sources. These sources account for 15 percent, 29 percent, and 2 percent, respectively. Annually, area sources accounted for 29 percent of the emissions, with major industry, onroad, and nonroad sources accounting for 21 percent, 46 percent, and 4 percent, respectively.

The state also submitted a 2017 emissions inventory to correspond with the end of the 10-year period covered by the maintenance plan. The total emissions projected for 2017 are about 14 percent higher than those of the 2001 attainment inventory on a worst case day and 18 percent higher annually. The increase is primarily due to the use of allowable emissions from the existing point sources and a projected increase in emissions from onroad mobile sources. The projected growth in population, housing and employment is expected to be about 0.8, 0.7 and 0.3 percent per year, respectively, and vehicle miles traveled (VMT) are projected to increase at 1.9 percent per year. In addition to the VMT projection of 1.9 percent per year, an additional ten percent was added to VMT to address future unanticipated transportation projects.

Based on review of the emissions inventories, EPA concludes that the methods used to develop the emissions inventories are consistent with EPA guidelines. The assumptions and calculations were checked and found to be thorough and comprehensive. In sum, the State has adequately developed an attainment emissions inventory for 2001 that identifies the levels of emissions of PM_{10} in the area that is sufficient to attain the NAAQS. Further, the State has adequately developed a future year (2017) inventory for use in demonstrating maintenance with the NAAQS at least ten years after redesignation.

2. Maintenance Demonstration

A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS. Under the Act, PM_{10} areas are required to submit modeled attainment demonstrations to show that proposed reductions in emissions will be sufficient to attain the applicable NAAQS. For these areas, the maintenance demonstration should be based upon the same level of modeling. The demonstration should be for a period of 10 years following the redesignation.

EPA approved the use of proportional roll-back with receptor analysis for the La Grande attainment demonstration. 60 FR 8563 (February 15, 1995). The proportional roll-back approach assumes that future air quality levels are directly proportional to increases or decreases in total emissions for the area. Receptor analysis (chemical mass balance (CMB) in this case) determines the amount and kind of emission reductions that are required to attain the NAAQS. Using this combined approach, DEQ concluded that a reduction in woodsmoke, industrial emissions, and road sanding emissions would bring the total 24-hour PM_{10} concentration below the NAAQS. The State subsequently implemented control measures to reduce emissions from these sources, and soon after, the area's PM_{10} levels dropped. As of the Clean Air Act December 31, 1994, deadline, the La Grande area attained the PM_{10} NAAQS.

To demonstrate the area will continue to maintain the PM_{10} NAAQS, DEQ relied on the same level of modeling as was used for the attainment demonstration. DEQ used actual 24-hour emissions for 2001, the area's 2001 design value, and the projected 24-hour emissions for the maintenance year of 2017 to estimate 24-hour PM_{10} levels in 2017. To predict worst case 2017 annual PM_{10} concentrations, DEQ used the increase in emissions from 2001 (actual emissions) to 2017 (projected emissions). Based on these assumptions, DEQ's modeling results show the estimated 24-hour PM_{10} concentration for La Grande on a worst case day in 2017 is 103 $\mu g/m^3$. The estimated annual concentration for La Grande in 2017 is 25 $\mu g/m^3$. Both of these values are well below the levels of the PM_{10} NAAQS.

In sum, the modeling results show that the La Grande area will meet both the 24-hour and annual PM_{10} NAAQS at least until 2017. We therefore conclude that the State meets the requirements under section 175A of the Act to demonstrate maintenance of the NAAQS for PM_{10}.

3. Monitoring Network

DEQ has operated an ambient air quality monitoring network for PM_{10} in Oregon since the mid 1980s. The State network includes one monitoring site in La Grande and utilizes EPA reference or

equivalent method monitors and routine precision and accuracy checks of the monitoring equipment and makes necessary maintenance performed when warranted. EPA routinely reviews the State monitoring program and it meets Federal requirements.

4. Verification of Continued Attainment

Once an area has been redesignated, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. The La Grande maintenance plan provides for continued ambient monitoring in the area.

5. Contingency Plan

Section 175A of the Act also requires that a maintenance plan include contingency provisions, as necessary, to correct promptly any violation of the NAAQS that occurs after redesignation. These contingency measures are distinguished from those generally required for nonattainment areas under section 172(c)(9). For the purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. At a minimum, a contingency plan must require that the State will implement all measures contained in the Part D nonattainment plan for the area prior to redesignation.

Under the maintenance plan, the State will continue to implement the measures contained in its Part D nonattainment plan. The measures carried over address the following sources: Residential woodstoves, outdoor burning activities, winter road sanding, forest burning, agricultural burning, and fugitive dust. With regard to new industrial sources, once the La Grande area is redesignated to attainment and becomes a maintenance area, the PSD and maintenance NSR programs apply instead of the nonattainment NSR program. This means that Best Achievable Control Technology (BACT) will apply instead of Lowest Achievable Emission Rate (LAER) technology. Oregon is retaining the requirement to obtain offsets for new and expanding major sources in the La Grande PM_{10} Maintenance Area. By having maintenance NSR requirements in addition to PSD requirements, the La Grande maintenance plan goes beyond what is required by the Clean Air Act.

In addition to continuing to implement the measures contained in the Part D nonattainment area plan, the State provides for additional contingency measures under a ''phased'' approach. Phase One is triggered if PM_{10} concentrations equal or exceed 90 percent (135 $\mu g/m^3$) of the 24-hour or 90 percent (45 $\mu g/m^3$) of the annual NAAQS. If Phase One is triggered, the air quality committee and DEQ will evaluate the cause of the exceedance and recommend strategies to be considered for implementation. Within six months of the trigger, the committee will evaluate the cause of the near exceedance and if necessary, identify and recommend an action plan with a schedule for implementation of additional strategies as necessary to prevent an exceedance or violation of the PM_{10} standards. The schedule will include automatic implementation of more stringent requirements should Phase Two need to be implemented.

Phase Two is triggered if a violation of the PM_{10} standard occurs and is validated by DEQ. If Phase Two is triggered, reinstatement of nonattainment Part D New Source Review requirements for major sources of PM_{10} will automatically be implemented. In addition, strategies developed under Phase One, or re-evaluated under Phase Two, will be implemented on a schedule in an action plan, with all actions permanent and enforceable. The contingency strategies to be considered include various measures to reduce emissions from residential wood smoke, other types of burning, winter road sanding, and from vehicles. They also include adding dust controls to land-use planning, reviewing alternative heating systems, and developing additional strategies to address the most significant sources of particulate in the area.

In carrying over the control measures from the La Grande nonattainment area plan and providing for additional contingency measures under its phased approach, the La Grande PM_{10} maintenance plan meets the contingency plan requirements under section 175A of the Act.

B. What Do We Conclude About the Maintenance Plan?

Based on our review of the La Grande maintenance plan and for the reasons discussed above, we conclude that the requirements for an approvable maintenance plan under the Act have been met. Therefore, we are approving the maintenance plan for PM_{10} submitted for the La Grande nonattainment area.

III. Review of Redesignation Request

A. What Criteria Did EPA Use To Review the Request for Redesignation?

The criteria used to review the redesignation request are derived from the Act, the General Preamble, and a policy and guidance memorandum from John Calcagni, dated September 4, 1992, entitled *Procedures for Processing Requests to Redesignate Areas to Attainment.* Section 107(d)(3)(E) of the Act states that the EPA can redesignate an area to attainment if the following conditions are met:

1. The Administrator has determined the area has attained the NAAQS.

2. The Administrator has fully approved the applicable implementation plan under section 110(k).

3. The Administrator has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

4. The State has met all applicable requirements for the area under section 110 and Part D.

5. The Administrator has fully approved a maintenance plan, including a contingency plan, for the area under section 175A.

1. Attainment of the NAAQS

According to the Calcagni memorandum, the demonstration that the area has attained the PM_{10} NAAQS involves submitting ambient air quality data from an ambient air monitoring network representing peak PM_{10} concentrations. The data also should be recorded in the EPA's Air Quality System (AQS) database. The 24-hour PM_{10} NAAQS is 150 $\mu g/m^3$. An area has attained the 24-hour standard when the average number of expected exceedances per year is less than or equal to one, when averaged over a three year period. 40 CFR 50.6. To make this determination, three consecutive years of complete ambient air quality monitoring data must be collected in accordance with federal requirements (40 CFR part 58, including appendices).

Oregon's redesignation request for the La Grande PM_{10} nonattainment area is based on valid ambient air quality data for 1991 through 2003. These data were collected and analyzed according to 40 CFR 50.6 and 40 CFR part 50, Appendix J and stored in EPA's Air Quality System (AQS). These data meet minimum quality assurance requirements and have been certified by the State as being valid.

EPA reviewed the 1991–2004 PM_{10} data reported to EPA's Air Quality System (AQS) for the La Grande nonattainment area. There have been no

exceedences of the 24-hour PM_{10} standard since 1991, and the area has attained the standard (the average number of expected exceedances averaged over a three year period has been less than or equal to one) since the three year period ending on December 31, 1994.

The annual PM_{10} NAAQS is 50 μg/m³. To determine attainment, the expected annual mean PM_{10} concentration, which is the average of the weighted annual mean for three consecutive years, is compared to the annual standard. The weighted annual mean for each year, 1991 through 2004 for La Grande, is below 50 μg/m³. Because these values are below the 50 μg/m³ standard, the nonattainment area is in attainment with the annual PM_{10} NAAQS.

The La Grande nonattainment area in Oregon attained the 24-hour and annual PM_{10} NAAQS as of December 31, 1994, as required by the Clean Air Act. The area continues to be in attainment with both the 24-hour and annual PM_{10} NAAQS.

2. SIP Nonattainment Area Plan Approval Under Section 110(k)

In order for an area to qualify for redesignation, the SIP for the area must be fully approved under section 110(k) of the Act.

Oregon's Clean Air Act Part D initial PM_{10} plan for the La Grande PM_{10} nonattainment area was submitted on September 15, 1991. EPA approved the La Grande PM_{10} nonattainment area plan on February 15, 1995. 60 FR 8563. Thus, the area has a fully approved nonattainment area SIP.

3. Permanent and Enforceable Improvement in Air Quality

The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emissions reductions. In making this showing, the State must demonstrate that air quality improvements are the result of actual enforceable emissions reductions. This showing should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic.

Improvements in air quality in the La Grande nonattainment area are reasonably attributed to permanent and enforceable emissions reductions. La Grande's exceedances dropped to zero after the 1990–1991 winter season, corresponding with implementation of the area's voluntary woodstove curtailment program and a mandatory woodstove change-out program. In addition to the voluntary woodstove curtailment program and a mandatory woodstove change-out program, La Grande's permanent and enforceable control measures include a mandatory woodstove certification program requiring all new woodstoves sold in the State to be laboratory tested for emissions and efficiency prior to sale; a ban on burn barrels and other open burning restrictions; and a major road improvement project that oil matted or paved residential streets. Finally, DEQ relied on its major new source review program as a growth management strategy for industry.

The State also has demonstrated that the improvement in air quality was not due to either economic or meteorological conditions. Using population, employment and unemployment data for Union County (the county in which La Grande is located) as indicators, DEQ found that population has remained relatively stable, employment has generally increased slightly, and unemployment has generally decreased slightly since the early 1990s. Despite this growth in population and employment and a decrease in unemployment between 1992 and 1995, La Grande reached attainment in 1994 and continues to measure PM_{10} levels well below the standards. The area's PM_{10} reductions do not appear to be the result of an economic recession.

With regard to meteorology, DEQ reviewed periods of low sustained wind speeds during winter heating seasons from 1989 through 2003 to indicate periods of poor ventilation and the potential for exceedance conditions. As a result of its review, DEQ concluded that there has been an improvement in air quality even during the worst ventilation periods. We agree with DEQ's analysis and that it is reasonable to conclude that the steady decrease in PM_{10} concentrations from the early 1990s to the early 2000s is due to permanent and enforceable control measures and not to a change in economic or meteorological conditions.

4. Section 110 and Part D Requirements

Before EPA may approve a redesignation request, the applicable programs under section 110 and Part D that were due prior to the submission of a redesignation request must be adopted by the State and approved by EPA into the SIP.

a. Section 110 Requirements

Section 110(a)(2) of the Act contains general requirements for nonattainment area plans. These requirements include, but are not limited to, submission of a SIP that has been adopted by the State after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring, and reporting, provisions for modeling; and provisions for public and local agency participation.

The Administrator has fully approved the applicable implementation plan under section 110(k). In 40 CFR 52.1972, EPA has approved Oregon's SIP for the attainment and maintenance of the national standards under section 110. We also fully-approved Oregon's nonattainment NSR program, most recently on January 22, 2003. 68 FR 29530. In addition, Oregon has a fully approved Prevention of Significant Deterioration (PSD) program, also approved on January 22, 2003. 68 FR 29530. *See* Oregon Administrative Rules Chapter 340, Divisions 200, 202, 209, 212, 216, 222, 224, 225 and 268.

b. Part D Requirements

Part D consists of general requirements applicable to all areas which are designated nonattainment based on a violation of the NAAQS. The general requirements are followed by a series of subparts specific to each pollutant. All PM_{10} nonattainment areas must meet the applicable general provisions of subpart 1 and the specific PM_{10} provisions in subpart 4, ''Additional Provisions for Particulate Matter Nonattainment Areas.'' The following paragraphs discuss these requirements as they apply to the La Grande nonattainment area.

i. Section 172(c) Plan Provisions

This section contains general requirements for nonattainment area plans. A thorough discussion of these requirements may be found in the general preamble to Title I (57 FR 13498 (April 16, 1992)). The requirements for reasonable further progress, identification of certain emissions increases, emissions inventory, and other measures needed for attainment are satisfied by the nonattainment area plan submitted for the La Grande nonattainment area and approved on February 15, 1995. 60 FR 8563.

ii. Subpart 4 Requirements

As a moderate PM_{10} nonattainment area, the La Grande, Oregon area must

meet Part D, subpart 4, sections 189(a), (c), and (e) requirements before the area can be redesignated to attainment. These requirements must be fully approved into the SIP:

(a) Provisions to assure that RACM was implemented by December 10, 1993;

(b) Either a demonstration that the plan provided for attainment as expeditiously as practicable but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable;

(c) Quantitative milestones which were achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994;

(d) Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors, except where the Administrator determined that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area.

(e) Permit program under section 173 for the construction and operation of new and modified major stationary sources of PM_{10}.

EPA approved the nonattainment area plan for the La Grande nonattainment area, which met the initial requirements of the 1990 Clean Air Act for moderate PM_{10} nonattainment areas, on February 15, 1995. 60 FR 8563. This plan met requirements for RACM/BACM, demonstrating attainment, quantitative milestones, PM_{10} precursors, contingency measures, and quantitative milestones for demonstrating RFP. As mentioned above, the provisions related to NSR were most recently approved in the Oregon SIP on January 22, 2003. 68 FR 29530. Oregon also has a fully approved Prevention of Significant Deterioration (PSD) program, also approved on January 22, 2003. 68 FR 29530. *See* Oregon Administrative Rules Chapter 340, Divisions 200, 202, 209, 212, 216, 222, 224, 225 and 268.

5. Transportation Conformity

Under section 176(c) of the Act, transportation plans, programs and projects in nonattainment or maintenance areas that are funded or approved under Title 23 U.S.C. or the Federal Transit Laws must conform to the applicable SIP. In short, a transportation plan is deemed to conform to the applicable SIP if the emissions resulting from the implementation of that transportation plan are less than or equal to the motor vehicle emissions level or ''budget'' established in the SIP for the maintenance year and other analysis years.

DEQ has developed a PM_{10} MVEB for La Grande through 2017 that meets the transportation conformity criteria in 40 CFR 93.118(e)(4). The motor vehicle emissions budget is established for all years. The budget is as follows:

LA GRANDE PM_{10} MOTOR VEHICLE EMISSIONS BUDGET THROUGH 2017

[Pounds PM_{10}/24-hour winter day]

Year	All years
Motor Vehicle Emissions Budget	2750

The TSD summarizes how the PM_{10} motor vehicle emissions budget meets the criteria contained in the conformity rule at 40 CFR 93.118(e)(4).

6. Maintenance Plans

Section 107(d)(3)(E) of the Act stipulates that for an area to be redesignated, EPA must fully approve a maintenance plan which meets the requirements of section 175A. A State may submit both the redesignation request and the maintenance plan at the same time and rulemaking on both may proceed on a parallel track.

On October 25, 2005, DEQ submitted a PM_{10} maintenance plan and redesignation request for the La Grande nonattainment area. In section II above, we evaluated the plan and concluded that the requirements for an approvable maintenance plan under the Act have been met.

B. What Do We Conclude About the Request for Redesignation?

Based on our evaluation of DEQ's October 25, 2005 SIP submittal, we conclude that all the requirements for redesignation in section 107(d)(3)(E) have been met. Therefore, we are redesignating the La Grande PM_{10} nonattainment area to attainment.

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 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 May 22, 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

40 CFR Part 52

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

40 CFR Part 81

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

Dated: February 24, 2006.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

■ Chapter I, title 40 of the Code of Federal Regulations 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 MM—Oregon

■ 2. Section 52.1970 is amended by adding paragraph (c)(146) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(146) On October 25, 2005, the Oregon Department of Environmental Quality submitted a PM_{10} maintenance plan and requested redesignation of the La Grande PM_{10} nonattainment area to attainment for PM_{10}. The State's maintenance plan and the redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) Oregon Administrative Rule 340–204–0030 and 0040, as effective September 9, 2005.

■ 3. Section 52.1973 is amended by adding paragraph (e)(3) to read as follows:

§ 52.1973 Approval of plans.

* * * * *

(e) * * *

(3) EPA approves as a revision to the Oregon State Implementation Plan, the La Grande PM_{10} maintenance plan adopted by the Oregon Environmental Quality Commission on August 11, 2005 and submitted to EPA on October 25, 2005.

* * * * *

PART 81—[AMENDED]

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

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

■ 5. In § 81.338, the table entitled ''Oregon PM–10'' is amended by revising the entry for ''La Grande (the Urban Growth Boundary Area)'' to read as follows:

§ 81.338 Oregon.

* * * * *

OREGON—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * *	*		*	*
La Grande (the Urban Growth Boundary area)	5/22/06	Attainment.		
* * * *	*		*	*

* * * * *

[FR Doc. 06–2698 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R10–OAR–2006–0010; FRL–8041–9]

Approval and Promulgation of Air Quality Implementation Plans; Lakeview PM_{10} Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a PM_{10} State Implementation Plan (SIP) maintenance plan revision for the Lakeview, Oregon nonattainment area and to redesignate the area from nonattattainment to attainment for PM_{10}. PM_{10} air pollution is suspended particulate matter with a nominal diameter less than or equal to a nominal ten micrometers. EPA is approving the SIP revision and redesignation request because the State adequately demonstrates that the control measures being implemented in the Lakeview area result in maintenance of the PM_{10} National Ambient Air Quality Standards and all other requirements of the Clean Air Act for redesignation to attainment are met.

DATES: This direct final rule will be effective May 22, 2006, without further notice, unless EPA receives adverse comments by April 21, 2006. If adverse comments are 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–R10–OAR–2006–0010, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Mail: Donna Deneen, Office of Air, Waste and Toxics, AWT–107, EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101.
- Hand Delivery: EPA, Region 10 Mail Room, 9th Floor, 1200 Sixth Ave., Seattle, Washington 98101. Attention: Donna Deneen, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2006–0010. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.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 *http://www.regulations.gov.* 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 comment. If you send an e-mail comment directly to EPA without going through *http://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.*

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, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Seattle, Washington. EPA requests that, if possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

FOR FURTHER INFORMATION CONTACT: Donna Deneen at telephone number: (206) 553–6706, e-mail address: *deneen.donna@epa.gov*, fax number: (206) 553–0110, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used, we mean EPA.

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a. Section 110 Requirements
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I. General Overview

A. What Action Are We Taking?

We are taking direct final action to approve the SIP revision and redesignation request submitted by the State of Oregon Department of Environmental Quality (DEQ or State) on October 25, 2005, for the Lakeview, Oregon PM_{10} nonattainment area (Lakeview nonattainment area). We are approving the State's SIP revision and request for redesignation because the State adequately demonstrates that the control measures being implemented in the Lakeview area result in maintenance of the PM_{10} National Ambient Air Quality Standards (NAAQS) and all other requirements of the Clean Air Act (the Act) for redesignation to attainment are met. See the Technical Support Document (TSD) accompanying this notice for further supporting documentation.

B. What Is the Background for This Action?

1. Description of the Area

Lakeview is located in southern Oregon about 96 miles east of Klamath Falls at an elevation of about 4800 feet. The area is typified by semi-arid climate where annual rainfall is 13 inches. The Lakeview Urban Growth Boundary (UGB), which defines the nonattainment area boundaries, had an estimated population of 3,656 in 2000. The population is projected to grow to just over 4,500 by 2025.

Lakeview can experience very strong nighttime inversions that break up with daytime solar heating. In the wintertime, arctic air masses frequently move over the Goose Lake Basin. Temperatures can remain well below freezing for several weeks at a time. Winter nights are commonly clear and cool in the basin.

2. Nonattainment History of the Lakeview Area

On July 1, 1987 (52 FR 24634), the Environmental Protection Agency (EPA) revised the National Ambient Air Quality Standards (NAAQS) for particulate matter with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). See 40 CFR 50.6. The 24-hour primary PM_{10} standard is 150 micrograms per cubic meter ($\mu g/m^3$), with no more than one expected exceedance per year over a three year period. The annual primary PM_{10}

standard is 50 μg/m³ expected annual arithmetic mean over a three year period. The secondary PM_{10} standards are identical to the primary standards.

By operation of law upon enactment of the 1990 Clean Air Act Amendments, Lakeview, Oregon was designated ''unclassifiable'' for PM_{10} due to a lack of air quality monitoring data (see Clean Air Act section 107(d)(4)(B)(iii)). The State of Oregon subsequently conducted monitoring in the Lakeview area to verify PM_{10} concentrations and determine if its designation status should be revised.

Based on monitoring data showing violation of the PM_{10} standard, on December 29, 1992, the Governor of Oregon requested that Lakeview be redesignated to nonattainment for PM_{10}. Additionally, Oregon requested that the nonattainment area be defined as the Lakeview Urban Growth Boundary. EPA approved these requests and redesignated Lakeview as nonattainment for PM_{10} and classified it as moderate effective December 25, 1993 (58 FR 49931).

The State developed a nonattainment area SIP revision designed to bring about attainment of the PM_{10} NAAQS. Oregon's Clean Air Act Part D initial PM_{10} plan (nonattainment area plan) for the Lakeview PM_{10} nonattainment area was submitted on June 1, 1995. EPA approved the Lakeview PM_{10} nonattainment area plan on September 21, 1999. 64 FR 51051.

In order for the Lakeview nonattainment area to be redesignated to attainment for PM_{10}, a 10-year maintenance plan and redesignation request is required for the area. A SIP revision containing these elements was submitted to EPA on October 25, 2005. We are approving both these elements in this action.

3. Description of the Air Quality Problem

The Lakeview area violated the Federal 24-hour PM_{10} standard of 150 μg/m³ on multiple dates in 1991, 1992, 1993, and 1994. The highest 24-hour average PM_{10} concentration of 256 μg/m³ was recorded on January 27, 1993. The last 24-hour exceedance of 184 μg/m³ was recorded on January 19, 1994.

Higher levels of PM_{10} are typically a wintertime problem in Lakeview due to temperature inversions that trap particulate matter emissions in the area. Wintertime emissions sources include area sources (wood stoves/fireplace emissions and fugitive dust) and industrial sources.

There have been no PM_{10} exceedances in Lakeview since 1994. Based on data measured after 1994, the Lakeview area attained the 24-hour PM_{10} NAAQS by the Clean Air Act deadline of December 31, 1999.

The area has never exceeded the annual NAAQS of 50 μg/m³. The highest annual average PM_{10} concentration for Lakeview was 31.7 μg/m³ in 1992. The area meets the annual PM_{10} NAAQS.

II. Review of Maintenance Plan

A. What Criteria Did EPA Use To Review the Maintenance Plan?

Section 107(d)(3)(E) of the Act stipulates that for an area to be redesignated to attainment, EPA must fully approve a maintenance plan which meets the requirements of Section 175A. Section 175A defines the general framework of a maintenance plan, which must provide for maintenance (*i.e.*, continued attainment) of the relevant NAAQS in the area for at least ten years after redesignation. The following is a list of core provisions required in an approvable maintenance plan.

1. The State must develop an attainment emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS.

2. The State must demonstrate maintenance of the NAAQS.

3. The State must verify continued attainment through operation of an appropriate air quality monitoring network.

4. The maintenance plan must include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area.

As explained below, the PM_{10} maintenance plan for the Lakeview nonattainment area complies with each of these requirements.

1. Attainment Emissions Inventory (and Future Year Inventory)

The State submitted a PM_{10} attainment emissions inventory for 2001, a year in which no PM_{10} exceedances occurred and one of the five years used to determine the area's PM_{10} design value for the maintenance plan. Based on the 2001 worst case day emissions inventory, area sources (mainly wood stoves/fireplace emissions and fugitive dust) account for 59 percent of the emissions. The rest are attributed to industrial sources, onroad sources, nonroad sources and natural sources. These account for 28 percent, 11 percent, 1 percent, and 1 percent, respectively. Annually, area sources accounted for 40 percent of the emissions, with industrial, onroad, nonroad, and natural sources accounting for 30 percent, 21 percent, 8 percent, and 1 percent, respectively.

The state also submitted a 2017 emissions inventory to correspond with the end of the 10 year period covered by the Lakeview maintenance plan. The total emissions projected for 2017 are about 12 percent higher than those of the 2001 attainment inventory on a worst case day and 31 percent higher annually. The increase is primarily due to the use of allowable emissions from the existing point sources, and not primarily due to a projected increase in actual emissions. The projected growth in population, households, and industrial employment is expected to be about 1 percent per year and vehicle miles traveled (VMT) are projected to increase at 1.7 percent per year. In addition to the VMT projection of 1.7 percent per year, an additional ten percent was added to VMT to address future unanticipated transportation projects.

Based on review of the emissions inventories, EPA concludes that the methods used to develop the emissions inventories are consistent with EPA guidelines. The assumptions and calculations were checked and found to be thorough and comprehensive. In sum, the State has adequately developed an attainment emissions inventory for 2001 that identifies the levels of emissions of PM_{10} in the area that is sufficient to attain the NAAQS. Further, the State has adequately developed a future year (2017) inventory for use in demonstrating maintenance with the NAAQS at least ten years after redesignation.

2. Maintenance Demonstration

A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS. Under the Act, PM_{10} areas are required to submit modeled attainment demonstrations to show that proposed reductions in emissions will be sufficient to attain the applicable NAAQS. For these areas, the maintenance demonstration should be based upon the same level of modeling. The demonstration should be for a period of 10 years following the redesignation.

EPA approved the use of proportional roll-back with receptor analysis for the Lakeview attainment demonstration. 64 FR 51051 (September 21, 1999). The proportional rollback approach assumes

that future air quality levels are directly proportional to increases or decreases in total emissions for the area. Receptor analysis (chemical mass balance (CMB) in this case) determines the amount and kind of emission reductions that are required to attain the NAAQS. Using this combined approach, DEQ concluded that a significant reduction in woodsmoke would bring the total 24-hour PM_{10} concentration below the NAAQS. The State subsequently implemented control measures to reduce woodsmoke, and soon after, the area's PM_{10} levels dropped. As of December 31, 1997 (which was prior to the area's Clean Air Act deadline), air quality data showed the Lakeview area attained the PM_{10} NAAQS.

To demonstrate the area will continue to maintain the PM_{10} NAAQS, DEQ relied on the same level of modeling as was used for the attainment demonstration. DEQ used actual 24-hour emissions for 2001, the area's 2001 design value, and the projected 24-hour emissions for the maintenance year of 2017 to estimate 24-hour PM_{10} levels in 2017. To predict worst case 2017 annual PM_{10} concentrations, DEQ used the increase in emissions from 2001(actual emissions) to 2017 (projected emissions). Based on these assumptions, DEQ's modeling results show the estimated 24-hour PM_{10} concentration for Lakeview on a worst case day in 2017 is 122 $\mu g/m^3$. The estimated annual concentration for Lakeview in 2017 is 26 $\mu g/m^3$.

In sum, the modeling results show that the Lakeview area will meet both the 24-hour and annual PM_{10} NAAQS at least until 2017. We therefore conclude that the State meets the requirements under section 175A of the Act to demonstrate maintenance of the NAAQS for PM_{10}.

3. Monitoring Network

DEQ has operated an ambient air quality monitoring network for PM_{10} in Oregon since the mid 1980s. The State network includes one monitoring site in Lakeview and utilizes EPA reference or equivalent method monitors and routine precision and accuracy checks of the monitoring equipment and makes necessary maintenance performed when warranted. EPA routinely reviews the State monitoring program and it meets Federal requirements.

4. Verification of Continued Attainment

Once an area has been redesignated, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. The Lakeview maintenance plan provides for continued ambient monitoring in the area.

5. Contingency Plan

Section 175A of the Act also requires that a maintenance plan include contingency provisions, as necessary, to correct promptly any violation of the NAAQS that occurs after redesignation. These contingency measures are distinguished from those generally required for nonattainment areas under Section 172(c)(9). For the purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. At a minimum, a contingency plan must require that the State will implement all measures contained in the Part D nonattainment plan for the area prior to redesignation.

Under the maintenance plan, the State will continue to implement the measures contained in its Part D nonattainment plan. The measures carried over address the following sources: residential woodstoves, outdoor burning activities, winter road sanding, forest burning, an existing industrial source, and fugitive dust. With regard to new industrial sources, once Lakeview is redesignated to attainment and becomes a maintenance area, the PSD and maintenance NSR programs apply instead of the nonattainment NSR program. This means that Best Achievable Control Technology (BACT) will apply instead of Lowest Achievable Emission Rate (LAER) technology and the requirement to demonstrate compliance with a growth allowance cap (a provision specific to Oregon that is not required by PSD) and PSD increment will apply instead of the requirement to obtain offsets. By having maintenance NSR requirements in addition to PSD requirements, the Lakeview PM_{10} maintenance plan goes beyond what is required by the Clean Air Act.

In addition to continuing to implement the measures contained in the Part D nonattainment area plan, the State provides for additional contingency measures under a ''phased'' approach. Phase One is triggered if PM_{10} concentrations equal or exceed 93 percent (140 $\mu g/m^3$) of the 24-hour or 90 percent (45 $\mu g/m^3$) of the annual NAAQS. If Phase One is triggered, the air quality committee and DEQ will evaluate the cause of the exceedance and recommend strategies to be considered for implementation. Within six months of the trigger, the committee will evaluate the cause of the near exceedance and if necessary, identify and recommend an action plan with a schedule for implementation of additional strategies as necessary to prevent an exceedance or violation of the PM_{10} standards. The schedule will include automatic implementation of more stringent requirements should Phase Two need to be implemented.

Phase Two is triggered if a violation of the PM_{10} standard occurs and is validated by DEQ. If Phase Two is triggered, reinstatement of nonattainment Part D New Source Review requirements for major sources of PM_{10} will automatically be implemented. In addition, strategies developed under Phase One, or re-evaluated under Phase Two, will be implemented on a schedule in an action plan, with all actions permanent and enforceable. The contingencies strategies to be considered include alternative heating systems, industrial strategies, a mandatory woodstove curtailment program, forest slash burning strategies, an uncertified woodstove ordinance, and outdoor burning restrictions.

In carrying over all the control and contingency measures from the moderate area plan and providing for additional contingency measures under its phased approach, the Lakeview maintenance plan meets the contingency plan requirements under Section 175A of the Act.

B. What Do We Conclude About the Maintenance Plan?

Based on our review of the Lakeview PM_{10} maintenance plan and for the reasons discussed above, we conclude that the requirements for an approvable maintenance plan under the Act have been met. Therefore, we are approving the maintenance plan for PM_{10} submitted for the Lakeview nonattainment area.

III. Review of Redesignation Request

A. What Criteria Did EPA Use To Review the Request for Redesignation?

The criteria used to review the redesignation request are derived from the Act, the General Preamble, and a policy and guidance memorandum from John Calcagni, dated September 4, 1992, entitled *Procedures for Processing Requests to Redesignate Areas to Attainment.* Section 107(d)(3)(E) of the Act states that the EPA can redesignate an area to attainment if the following conditions are met:

1. The Administrator has determined the area has attained the NAAQS.

2. The Administrator has fully approved the applicable implementation plan under Section 110(k).

3. The Administrator has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

4. The State has met all applicable requirements for the area under Section 110 and Part D.

5. The Administrator has fully approved a maintenance plan, including a contingency plan, for the area under Section 175A.

1. Attainment of the NAAQS

According to the Calcagni memorandum, the demonstration that the area has attained the PM_{10} NAAQS involves submitting ambient air quality data from an ambient air monitoring network representing peak PM_{10} concentrations. The data also should be recorded in the EPA's Air Quality System (AQS) database. The 24-hour PM_{10} NAAQS is 150 μg/m³. An area has attained the 24-hour standard when the average number of expected exceedances per year is less than or equal to one, when averaged over a three year period. 40 CFR 50.6. To make this determination, three consecutive years of complete ambient air quality monitoring data must be collected in accordance with federal requirements (40 CFR Part 58, including appendices).

Oregon's redesignation request for the Lakeview PM_{10} nonattainment area is based on valid ambient air quality data for 1991 through 2003. These data were collected and analyzed according to 40 CFR 50.6 and 40 CFR Part 50, Appendix J and stored in EPA's Air Quality System (AQS). These data meet minimum quality assurance requirements and have been certified by the State as being valid.

EPA reviewed the 1991–2004 PM_{10} data reported to EPA's Air Quality System (AQS) for the Lakeview nonattainment area. There have been no exceedences of the 24-hour PM_{10} standard since 1994, and the area has attained the standard (the average number of expected exceedances averaged over a three year period has been less than or equal to one) since the three year period ending on December 31, 1997.

The annual PM_{10} NAAQS is 50 μg/m³. To determine attainment, the expected annual mean PM_{10} concentration, which is the average of the weighted annual mean for three consecutive years, is compared to the annual standard. The weighted annual mean for each year, 1991 through 2004 for Lakeview, is below 50 μg/m³ Because these values are below the 50 μg/m³ standard, the nonattainment area is in attainment with the annual PM_{10} NAAQS.

The Lakeview nonattainment area in Oregon attained the 24-hour and annual PM_{10} NAAQS as of December 31, 1999, as required by the Clean Air Act. The area continues to be in attainment with both the 24-hour and annual PM_{10} NAAQS.

2. SIP Nonattainment Area Plan Approval Under Section 110(k)

In order for an area to qualify for redesignation, the SIP for the area must be fully approved under section 110(k) of the Act.

Oregon's Clean Air Act Part D initial PM_{10} plan for the Lakeview PM_{10} nonattainment area was submitted on June 1, 1995. EPA approved the Lakeview PM_{10} nonattainment area plan on September 21, 1999. 64 FR 51051. Thus, the area has a fully approved nonattainment area SIP.

3. Permanent and Enforceable Improvement in Air Quality

The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emissions reductions. In making this showing, the State must demonstrate that air quality improvements are the result of actual enforceable emissions reductions. This showing should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic.

Improvements in air quality in the Lakeview nonattainment area are reasonably attributed to permanent and enforceable emissions reductions. A significant drop in peak PM_{10} concentrations occurred in the 1994–1995 timeframe, coinciding with implementation of the area's voluntary woodstove curtailment program and a mandatory woodstove change-out program. In addition to the voluntary woodstove curtailment program and the mandatory woodstove change-out program, Lakeview's permanent and enforceable control measures include a mandatory woodstove certification program requiring all new woodstoves sold in the State to be laboratory tested for emissions and efficiency prior to sale. In addition, DEQ relied on its major new source review program as a growth management strategy for industry.

The State also has demonstrated that the improvement in air quality was not due to either economic or meteorological conditions. Lakeview has had a relatively steady population and unemployment rate since the early 1990s through 2003. The area's PM_{10} reductions do not appear to be the result of an economic recession.

With regard to meteorology, DEQ compared the stagnation conditions during the 1991–92 through 1993–94 exceedance period to meteorological conditions in more recent years. In the past thirteen-year period (1991–92 to 2003–04) the most stagnant PM_{10} season was the 1991–92 season when PM_{10} levels were high. The least stagnant PM_{10} season was in 2002–03 when the PM_{10} concentrations were low. DEQ concluded that although it appears that PM_{10} concentrations seem to follow weather patterns and weather patterns show less poor ventilation recently, PM_{10} concentrations have declined at a greater rate than ventilation has improved. We agree with DEQ's analysis and that it is reasonable to conclude that the steady decrease in PM_{10} concentrations from the early 1990s to the early 2000s is due to permanent and enforceable control measures and not to a change in economic or meteorological conditions.

4. Section 110 and Part D Requirements

Before EPA may approve a redesignation request, the applicable programs under section 110 and Part D that were due prior to the submission of a redesignation request must be adopted by the State and approved by EPA into the SIP.

a. Section 110 Requirements

Section 110(a)(2) of the Act contains general requirements for nonattainment area plans. These requirements include, but are not limited to, submission of a SIP that has been adopted by the State after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring, and reporting, provisions for modeling; and provisions for public and local agency participation.

The Administrator has fully approved the applicable implementation plan under Section 110(k). In 40 CFR 52.1972, EPA has approved Oregon's SIP for the attainment and maintenance of the national standards under Section

110. We also fully-approved Oregon's nonattainment NSR program, most recently on January 22, 2003. 68 FR 29530. In addition, Oregon has a fully approved Prevention of Significant Deterioration (PSD) program, also approved on January 22, 2003. 68 FR 29530. See Oregon Administrative Rules Chapter 340, Divisions 200, 202, 209, 212, 216, 222, 224, 225 and 268.

b. Part D Requirements

Part D consists of general requirements applicable to all areas which are designated nonattainment based on a violation of the NAAQS. The general requirements are followed by a series of subparts specific to each pollutant. All PM_{10} nonattainment areas must meet the applicable general provisions of subpart 1 and the specific PM_{10} provisions in subpart 4, ''Additional Provisions for Particulate Matter Nonattainment Areas.'' The following paragraphs discuss these requirements as they apply to the Lakeview nonattainment area.

i. Section 172(c) Plan Provisions

This section contains general requirements for nonattainment area plans. A thorough discussion of these requirements may be found in the general preamble to Title I (57 FR 13498 (April 16, 1992)). The requirements for reasonable further progress, identification of certain emissions increases, emissions inventory, and other measures needed for attainment are satisfied by the nonattainment area plan submitted for the Lakeview nonattainment area and approved on September 21, 1999. 64 FR 51051.

ii. Subpart 4 Requirements

As a moderate PM_{10} nonattainment area, the Lakeview, Oregon area must meet Part D, subpart 4, sections 189(a), (c), and (e) requirements before the area can be redesignated to attainment. These requirements must be fully approved into the SIP:

(a) Provisions to assure that RACM was implemented by December 10, 1993;

(b) Either a demonstration that the plan provided for attainment as expeditiously as practicable but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable;

(c) Quantitative milestones which were achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994;

(d) Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors, except where the Administrator determined that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area.

(e) Permit program under section 173 for the construction and operation of new and modified major stationary sources of PM_{10}.

EPA approved the nonattainment area plan for the Lakeview nonattainment area, which met the initial requirements of the 1990 Clean Air Act for moderate PM_{10} nonattainment areas on September 21, 1999. 64 FR 51051. This plan met requirements for RACM/BACM, demonstrating attainment, quantitative milestones, PM_{10} precursors, contingency measures, and quantitative milestones for demonstrating RFP. As mentioned above, the provisions related to NSR were most recently approved in the Oregon SIP most recently approved on January 22, 2003. 68 FR 29530. Oregon also has a fully approved PSD program, also approved on January 22, 2003. 68 FR 29530. See Oregon Administrative Rules Chapter 340, Divisions 200, 202, 209, 212, 216, 222, 224, 225 and 268.

5. Transportation Conformity

Under section 176(c) of the Act, transportation plans, programs and projects in nonattainment or maintenance areas that are funded or approved under Title 23 U.S.C. or the Federal Transit Laws must conform to the applicable SIP. In short, a transportation plan is deemed to conform to the applicable SIP if the emissions resulting from the implementation of that transportation plan are less than or equal to the motor vehicle emissions level or ''budget'' established in the SIP for the maintenance year and other analysis years.

DEQ has developed a PM_{10} MVEB for Lakeview through 2017 that meets the transportation conformity criteria in 40 CFR 93.118(e)(4). The motor vehicle emissions budget is established for all years. The budget is as follows:

LAKEVIEW PM_{10} MOTOR VEHICLE EMISSIONS BUDGET THROUGH 2017

[Pounds PM_{10}/24-hour winter day]

Year	All years
Motor Vehicle Emissions Budget	311

The TSD summarizes how the PM_{10} motor vehicle emissions budget meets the criteria contained in the conformity rule at 40 CFR 93.118(e)(4).

6. Maintenance Plans

Section 107(d)(3)(E) of the Act stipulates that for an area to be redesignated, EPA must fully approve a maintenance plan which meets the requirements of section 175A. A State may submit both the redesignation request and the maintenance plan at the same time and rulemaking on both may proceed on a parallel track.

On October 25, 2005, DEQ submitted a PM_{10} maintenance plan and redesignation request for the Lakeview nonattainment area. In Section II above, we evaluated the plan and concluded that the requirements for an approvable maintenance plan under the Act have been met.

B. What Do We Conclude About the Request for Redesignation?

Based on our evaluation of DEQ's October 25, 2005 SIP submittal, we conclude that all the requirements for redesignation in Section 107(d)(3)(E) have been met. Therefore, we are redesignating of the Lakeview PM_{10} nonattainment area to attainment.

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 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 May 22, 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

40 CFR Part 52

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

40 CFR Part 81

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

Dated: February 24, 2006.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

■ Chapter I, title 40 of the Code of Federal Regulations 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 MM—Oregon

■ 2. Section 52.1970 is amended by adding paragraph (c)(147) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(147) On October 25, 2005, the Oregon Department of Environmental Quality submitted a PM_{10} maintenance plan and requested redesignation of the Lakeview PM_{10} nonattainment area to attainment for PM_{10}. The State's maintenance plan and the redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) The following sections of Oregon Administrative Rule 340: 204–0030, 204–0040, 224–0060 (2)(d) and 225–0020(8), as effective September 9, 2005.

■ 3. Section 52.1973 is amended by adding paragraph (e)(4) to read as follows:

* * * * *

§ 52.1973 Approval of plans.

(e) * * *

(4) EPA approves as a revision to the Oregon State Implementation Plan, the Lakeview PM_{10} maintenance plan adopted by the Oregon Environmental Quality Commission on August 11, 2005 and submitted to EPA on October 25, 2005.

* * * * *

PART 81—[AMENDED]

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

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

■ 5. In § 81.338, the table entitled ''Oregon PM–10'' is amended by revising the entry for ''Lakeview (the Urban Growth Boundary Area)'' to read as follows:

§ 81.338 Oregon.

* * * * *

OREGON.—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * *	*		*	*
Lakeview (the Urban Growth Boundary area)	5/22/06	Attainment.		
* * * *	*		*	*

* * * * *

[FR Doc. 06–2701 Filed 3–21–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0053; FRL–7766–8]

Imidacloprid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of imidacloprid in or on oats and rye. Bayer CropScience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective March 22, 2006. Objections and requests for hearings must be received on or before May 22, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2006–0053. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., 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 in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Daniel Kenny, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7546; e-mail address: *kenny.dan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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II. Background and Statutory Findings

In the **Federal Register** of January 27, 2006 (71 FR 4580) (FRL–7759–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F7020) by Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.472 be amended by establishing a tolerance for combined residues of the insecticide imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on oats, grain at 0.5 parts per million (ppm); oats, forage at 2.0 ppm; oats, hay at 6.0 ppm; oats, straw at 3.0 ppm; rye, grain at 0.5 ppm; rye, forage at 2.0 ppm; rye, hay at 6.0 ppm; and rye, straw at 3.0 ppm. In order to correct a typographical error in the original petition, the proposed tolerance levels for oats, grain and rye, grain were subsequently revised to 0.05 ppm. That notice included a summary of the petition prepared by Bayer CropScience, the registrant. There were no comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for combined residues of imidacloprid on oats, grain at 0.05 ppm; oats, forage at 2.0 ppm; oats, hay at 6.0 ppm; oats, straw at 3.0 ppm; rye, grain at 0.05 ppm; rye, forage at 2.0 ppm; rye, hay at 6.0 ppm; and rye, straw at 3.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

The proposed use for imidacloprid on oats and rye involves the registration of imidacloprid as a seed treatment. Imidacloprid is already registered as a seed treatment on barley, corn, sorghum, and wheat. Permanent tolerances for imidacloprid are established for barley, corn, sorghum, and wheat, and seed treatment residue data are available for these crops. These crops are considered to be representative commodities for the cereal grain crop group, which also includes oats and rye. After consideration of the existing data used to support the tolerances discussed above, and provided that the proposed oat and rye seed treatment application rates are similar to the application rates used in the barley, corn, sorghum, and wheat residue studies, EPA concluded that the translation of this data to support tolerances on oats and rye is acceptable and that the highest residues be used for estimation of residues in/on oat and rye.

On June 13, 2003 the Agency published a Final Rule (68 FR 35303, FRL–7310–8) establishing tolerances for residues of imidacloprid in or on acerola; artichoke, globe; avocado; banana (import); canistel; corn, pop, grain; corn, pop, stover; cranberry; currant; elderberry; feijoa; fruit, stone, group 12; gooseberry; huckleberry; guava; jaboticaba; juneberry; lingonberry; longan; lychee; mango; mustard, seed; okra; papaya; passionfruit; persimmon; pulasan; rambutan; salal; sapodilla; sapote, black; sapote, mamey; Spanish lime; star apple; starfruit; strawberry; vegetable, leaves of root and tuber, group 2; vegetable, legume, group 6, except soybean; vegetable, root and tuber, group 1, except sugar beet; watercress; wax jambu. When the Agency conducted the risk assessments in support of this tolerance action, it assumed that imidacloprid residues would be present on oats and rye (including grain, forage, hay, and straw) as well as on all foods covered by the proposed and established tolerances. Residues on oats and rye were included because there were previously established indirect or inadvertent tolerances for imidacloprid in or on cereal grains, including oats and rye. In assuming the dietary risk from the consumption of treated oats and rye, the most conservative assumptions were used (i.e., 100% of oats and rye crops were treated and residues on the treated commodities were at tolerance levels). Therefore, establishing permanent tolerances in or on oat and rye commodities will not change the most recent estimated aggregate risks resulting from use of imidacloprid, as discussed in the June 13, 2003 **Federal Register**. Refer to the June 13, 2003 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of June 13, 2003, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to imidacloprid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Bayer Gas Chromatography/Mass Spectrometry (GC/MS) Method 00200 in plant commodities, and Bayer GC/MS Method 00191 in livestock commodities) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established Codex maximum residue limits for imidacloprid in or on oats or rye.

V. Conclusion

Therefore, the tolerance is established for combined residues of imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on oats, grain at 0.05 ppm; oats, forage at 2.0 ppm; oats, hay at 6.0 ppm; oats, straw at 3.0 ppm; rye, grain at 0.05 ppm; rye, forage at 2.0 ppm; rye, hay at 6.0 ppm; and rye, straw at 3.0 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0053 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 22, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked

confidential may be disclosed publicly by EPA without prior notice.

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

2. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2006–0053, to: Public Information and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: March 13, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.472 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

(a)* * *

Commodity	Parts per million
* * * *	*
Oats, forage	a2.0
Oats, grain	0.05
Oats, hay	6.0
Oats, straw	3.0
* * * *	*
Rye, forage	2.0
Rye, grain	0.05
Rye, hay	6.0
Rye, straw	3.0

* * * * *

[FR Doc. 06–2712 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0168; FRL–7768–3]

Hexythiazox; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of hexythiazox (trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety (expressed as parent) in or on grape; citrus fruit, crop group 10 (CA, AZ, TX only); citrus, oil; citrus, dried pulp; fruit, pome, group 11; apple, wet pomace; and cattle, sheep, goat, and horse meat byproducts.

DATES: This regulation is effective March 22, 2006. Objections and requests for hearings must be received on or before May 22, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2006–0168. All documents in the docket are listed on the www.regulations.gov web site. EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Olga Odiott, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9369; e-mail address:*odiott.olga@epa.gov*.

SUPPLEMENTARY INFORMATION:

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

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II. Background and Statutory Findings

In the **Federal Register** of December 30, 2005 (70 FR 77363-77371) (FRL–7752–1), EPA issued a proposed rule pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), proposing that 40 CFR Part 180 be amended by establishing tolerances for combined residues of the insecticide hexythiazox and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety (expressed as parent), in or on grape at 0.75 ppm; citrus fruit, crop group 10 (CA, AZ, TX only) at 0.35 ppm; citrus, oil at 0.90 ppm; citrus, dried pulp at 1.5 ppm; fruit, pome, group 11 at 1.7 ppm; apple, wet pomace at 2.5 ppm; and cattle, sheep, goat, and horse meat byproducts at 0.12 ppm. That notice followed a notice of filing (**Federal Register** of June 1, 2005, 70 FR, 31455–31459, FRL–7711–8) of a pesticide petition (PP 3F6569) by Gowan Company, the registrant.

There was one comment received on the proposal. The commenter, B. Sachua, requested that a zero tolerance be set for hexythiazox based on the commenter's generalized criticisms of EPA's risk assessment process and EPA's alleged ''poor record on keeping tabs of incident reports of negative reports from use of pesticides. . . .'' EPA has responded to B. Sachua's generalized comments on several occasions. (See the **Federal Register** of

January 7, 2005 (70 FR 1349, 1354) (FRL–7691–4) and the **Federal Register** of October 29, 2004 (69 FR 63083, 63096) (FRL–7681–9). As to EPA's handling of incident reports, the Agency uses information from various reporting systems, including the National Institute of Occupational Safety and Health's Sentinel Event Notification System for Occupational Risks (NIOSH SENSOR), the National Pesticide Information Center (NPIC), Poison Control Centers, the California Department of Pesticide Regulation, and OPP Incident Data System to track and evaluate pesticide incident reports. These systems collect data from various sources including Federal and State health and environmental agencies, and individual consumers. In addition, Federal law requires registrants of pesticides to inform the Agency about harmful effects of their products. EPA specialists analyze the human and animal incident reports to determine if there is sufficient evidence to challenge the safety of a registered pesticide product and take action to reduce or eliminate the risks.

Many of the incident reports gathered from these sources represent anecdotal, not verifiable information. Nevertheless, unusual risk patterns observed and documented from these anecdotal reports prompt further evaluation by the Agency and may lead to risk mitigation measures to assure that pesticides do not result in unsafe residues in food or cause unreasonable risks when they are used according to label directions and precautions.

EPA's aggregate assessment of exposures and risks associated with establishing the proposed tolerances for hexythiazox are discussed in the **Federal Register** of December 30, 2005 (70 FR 77363–77371) (FRL–7752–1).

III. Conclusion

Based on the risk assessments discussed in the proposed rule and the findings made therein there is reasonable certainty that no harm will result to the U.S. population and to infants and children from aggregate exposure to residues of hexythiazox. Therefore, tolerances are established as set forth below.

IV. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0168 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 22, 2006.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2006–0168, to: Public Information and Records Integrity Branch, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

V. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates

Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d)(15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this action will not have significant negative economic impact on a substantial number of small entities. Establishing a tolerance, in effect, removes the statutory bar on the use of a pesticide on the specified crops and thus has no negative economic impact. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: March 13, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.448 is amended as follows:

■ a. In the table to paragraph (a) by removing the entries for ''apple'' and ''pear;'' by adding alphabetically entries for ''citrus, dried pulp;'' ''citrus, oil;'' ''fruit, pome, group 11;'' and ''grape;'' and by revising the entries for ''apple, wet pomace;'' ''cattle, meat byproducts;'' ''goat, meat byproducts;'' ''horse, meat byproducts;'' and ''sheep, meat byproducts.''

■ b. In the table to paragraph (c) by adding an entry for ''fruit, citrus group 10 (CA, AZ, TX only).''

§ 180.448 Hexythiazox; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	*
Apple, wet pomace	2.5
* * * *	*
Cattle, meat byproducts	0.12
Citrus, dried pulp	1.5
Citrus, oil	0.90
* * * *	*
Fruit, pome, group 11	1.7
* * * *	*
Goat, meat byproducts	0.12
Grape	0.75
* * * *	*
Horse, meat byproducts	0.12
* * * *	*
Sheep, meat byproducts	0.12
* * * *	*

* * * * *

(c) * * *

Commodity	Parts per million
* *	* * *
Fruit, citrus group 10 (CA, AZ, TX only)	0.35

* * * * *

[FR Doc. 06–2632 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0251; FRL–7760–6]

Inert Ingredients; Revocation of 29 Pesticide Tolerance Exemptions for 27 Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking 29 exemptions from the requirement of a tolerance that are associated with 27 inert ingredients because these substances are no longer contained in active Federal Insecticide, Fungicide,

and Rodenticide Act (FIFRA) pesticide product registrations. These ingredients are subject to reassessment by August, 2006 under section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The 29 tolerance exemptions are considered ''reassessed'' for purposes of FFDCA's section 408(q).

DATES: This regulation is effective March 22, 2006. Objections and requests for hearings must be received on or before May 22, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit V. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2005–0251. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0404; e-mail address: *angulo.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

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

B. How Can I Get Electronic Documents and Other Related Information?

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

II. What Action is the Agency Taking?

In the **Federal Register** of November 16, 2005 (70 FR 69489; FRL–7741–6), EPA issued a proposed rule to revoke 30 exemptions from the requirement of a tolerance that are associated with 28 inert ingredients because those substances are no longer contained in pesticide products. The proposed rule provided a 60–day comment period that invited public comment for consideration and for support of tolerance exemption retention under the FFDCA standards.

In this final rule, EPA is revoking 29 exemptions from the requirement of a tolerance that are associated with 27 inert ingredients because these specific tolerance exemptions correspond to uses no longer current or registered under FIFRA in the United States. The tolerance exemptions revoked by this final rule are no longer necessary to cover residues of the relevant pesticide chemicals in or on domestically treated commodities or commodities treated outside but imported into the United States.

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

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

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances or tolerance exemptions on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance or tolerance exemption is no longer needed.

3. The tolerance or tolerance exemption is not supported by data that demonstrate that the tolerance or tolerance exemption meets the requirements under FQPA.

The Agency received three comments in response to the proposed revocation notice. One commentor provided sufficient evidence to the Agency that the inert ingredient tannin is currently used in a registered pesticide product, therefore, the exemption from the requirement of a tolerance for tannin will not be revoked as part of this action and tannin will undergo tolerance reassessment. Another commenter requested that an inert ingredient be retained but did not provide to the Agency any evidence as specified in the proposed rule in the **Federal Register** (November 16, 2005; EPA–HQ–OPP–2005–0251;) that the inert ingredient is currently used in a registered pesticide product, therefore, the inert is being revoked as part of this action.

The third commentor requested that the tolerance exemptions for paraformaldehyde currently found in 180.920 and 180.930 be retained for some unspecified future use. The Agency's ''Guidance for the Reregistration of Pesticide Products Containing Formaldehyde and Paraformaldehyde as the Active Ingredient'' (5/31/88; EPA publication number 540/RS–88–080; page 7) states ''This standard covers products containing formaldehyde or paraformaldehyde currently classified as either active or inert ingredients. As inert ingredients, formaldehyde and paraformaldehyde are intentionally added to preserve the pesticidal activity of formulations by preventing deterioration caused by bacteria and

fungi. As preservatives in formulations, formaldehyde or paraformaldehyde perform a pesticidal function. Therefore, the Agency has determined that formaldehyde and paraformaldehyde should be characterized as active ingredients in all products in which they are used, including those in which they currently are only intentionally added as an inert ingredient. Thus, all products containing formaldehyde and paraformaldehyde as a preservative of the formulation will be considered to contain these chemicals as active ingredients.'' The Agency's determination that paraformaldehyde is considered to be an active ingredient may explain why there are no current inert ingredient uses. Therefore, the tolerance exemptions for paraformaldehyde are being revoked now.

Therefore, for the reasons stated herein and in the proposed rule, EPA is revoking the 29 exemptions from the requirement of a tolerance that were identified in **Federal Register** Notice of November 16, 2005 (EPA–HQ–OPP–2005–0251).

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

This final rule is issued pursuant to section 408(d) of FFDCA (21 U.S.C. 346a(d)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

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

IV. When Do These Actions Become Effective?

These actions become effective on the date of publication of this final rule in the **Federal Register**.

Any commodities listed in the regulatory text of this document that are treated with the pesticide chemicals subject to this final rule, and that are in the channels of trade following the tolerance exemption revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residues of these pesticide chemicals in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide chemical at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under an exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide chemical was applied to such food.

V. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0251 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 22, 2006.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit V.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2005–0251, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. Please use an

ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VI. Statutory and Executive Order Reviews

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: March 7, 2006,

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

§§ 180.1062, 180.1077, and 180.1133 [Removed]

■ 2. Sections 180.1062, 180.1077, and 180.1133 are removed.

§ 180.910 [Amended]

■ 3. Section 180.910 is amended by removing from the table the entries for:

a. Coumarone-indene resin, conforming to 21 CFR 172.215;

b. Diacetyl tartaric acid esters of mono- and diglycerides of edible fatty acids;

c. Methyl ester of rosin, partially hydrogenated (as defined in 21 CFR 172.615);

d. Modified polyester resin derived from ethylene glycol, fumaric acid, and rosin;

e. Montmorillonite-type clay treated with polytetrafluoroethylene (PTFE; CAS Reg. No. 9002–84–0);

f. Pentaerythritol ester of modified resin;

g. Pentaerythritol stearates mixture (CAS Reg. No. 85116–93–4) which include pentaerythritol monostearate (CAS Reg. No. 78–23–9), pentaerythritol distearate (CAS Reg. No. 13081–97–5), pentaerythritol tristearate (CAS Reg. No. 28188–24–1) and pentaerythritol tetrastearate (CAS Reg. No. 115–83–3);

h. Sodium N-lauroyl-N-methyltaurine;

i. Sodium N-palmitoyl-N-methyltaurine; and

j. Sodium oleyl sulfate.

§ 180.920 [Amended]

■ 4. Section 180.920 is amended by removing from the table the entries for:

a. Ammonium thiocyanate;

b. Animal waste material (produced by the thermophilic digestion of cattle and poultry manure);

c. Condensation product of orthophenylphenol with 5 moles of ethylene oxide;

d. Diacetone alcohol;

e. Isoamyl acetate;

f. Paraformaldehyde;

g. Phenolic resins;

h. Sodium salt of partially or completely saponified dark wood rosin (as defined in 21 CFR 178.3870(a)(4));

i. Toluene;

j. Trimethylolpropane (CAS Reg. No. 77–66–9); and

k. Woolwax alcohol.

§ 180.930 [Amended]

■ 5. Section 180.930 is amended by removing from the table the entries for:

a. Diacetyl tartaric acid esters of mono- and diglycerides of edible fatty acids;

b. 2-[Methyl [(perfluoroalkyl)alkyl(C_2–C_8)sulfonyl] amino]alkyl(C_2–C_8) acrylate—alkyl (C_2–C_8)methacrylates-N-methylolacrylamide copolymer;

c. Nitrile rubber modifed acrylonitrile methylacrylate (CAS Reg. No. 27012–62–0) conforming to 21 CFR 177.1480;

d. Paraformaldehyde; and

e. Wood rosin acid, potassium salts, conforming to 21 CFR 178.3870.

[FR Doc. 06–2631 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–431; MB Docket No. 04–266, RM–11005; MB Docket No. 04–267, RM–11008; MB Docket No. 04–268, RM–11009; MB Docket No. 04–269, RM–11010; and MB Docket No. 04–270, RM 11012]

Radio Broadcasting Services; Harrisonburg, LA; Mecca, CA; Rosepine, LA; San Joaquin, CA; and Taos, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots five channels to the communities of Harrisonburg, Louisiana; Mecca, California; Taos, New Mexico; San Joaquin, California; and Rosepine, Louisiana *See* **SUPPLEMENTARY INFORMATION**, *infra*.

DATES: Effective April 10, 2006. The window period for filing applications for these channels will not be opened at this time. Instead, the issue of opening filing windows for these allotments for auction will be addressed by the Commission in a subsequent order.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket Nos. 04–266, 04–267, 04–268, 04–269 and 04–270, adopted February 22, 2006, and released February 24, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

The Audio Division, at the request of Charles Crawford, allots Channel 232A at Harrisonburg, Louisiana, as the community's first local aural transmission service. *See* 69 FR 46474, August 3, 2004. Channel 232A can be allotted to Harrisonburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.9 kilometers (3.0 miles) northeast to avoid short-spacings to the licensed sites of Station WEMX(FM), Channel 231C, Kentwood, Louisiana, and Station KSMB(FM), Channel 233C, Lafayette, Louisiana. The coordinates for Channel 232A at Harrisonburg are 31–48–18 North Latitude and 91–47–26 West Longitude.

The Audio Division, at the request of Dana J. Puopolo, allots Channel 274A at Mecca, California, as the community's second local aural transmission service. *See* 69 FR 46474, August 3, 2004. Channel 274A can be allotted to Mecca in compliance with the Commission's minimum distance separation requirements a city reference. The coordinates for Channel 274A at Mecca are 33–34–18 North Latitude and 116–04–35 West Longitude. Because Mecca is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been obtained.

The Audio Division, at the request of Dana J. Puopolos, allots Channel 288A at Taos, New Mexico, as the community's fifth local aural transmission service. *See* 69 FR 46474, August 3, 2004. Channel 288A can be allotted to Taos in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.3 kilometers (5.2 miles) northwest to avoid a short-spacing to the proposed allotment site for Channel 287C at Des Moines, New Mexico. The coordinates for Channel 288A at Taos are 36–26–55 North Latitude and 105–39–00 West Longitude

The Audio Division, at the request of Linda A. Davidson, allots Channel 299A at San Joaquin, California, as the community's second local FM transmission service. *See* 69 FR 46474, August 3, 2004. Channel 299A can be allotted to San Joaquin in compliance with the Commission's minimum distance separation requirements with a site restriction of 2 kilometers (1.2 miles) west to avoid a short-spacing to the licensed site for Station KZOL(FM), Channel 200B1, North Fork, California. The coordinates for Channel 299A at San Joaquin are 36–36–00 North Latitude and 120–12–36 West Longitude.

The Audio Division, at the request of Charles Crawford, allots Channel 281A at Rosepine, Louisiana, as the community's first local aural transmission service. *See* 69 FR 46474, August 3, 2004. Channel 281A can be allotted to Rosepine in compliance with the Commission's minimum distance separation requirements site restriction of 5.5 kilometers (3.4 miles) west to avoid a short-spacing to the licensed site

of Station KJLO–(FM), Channel 281C, Monroe, Louisiana. The coordinates for Channel 281A at Rosepine are 30–55–24 North Latitude and 93–20–24 West Longitude.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 274A at Mecca; and by adding Channel 299A at San Joaquin.

■ 3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Harrisonburg, Channel 232A; and by adding Rosepine, Channel 281A.

■ 4. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 288A at Taos.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–2719 Filed 3–21–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–513; MB Docket No. 03–78; RM–10684]

Radio Broadcasting Services; Bend and Prineville, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 253C1 for Channel 252C3 at Bend, Oregon and modifies the Station KTWS–FM license to specify operation on Channel 253C1. To accommodate this upgrade, this document also substitutes Channel 271C3 for vacant Channel 255C3 at Prineville, Oregon. The reference coordinates for the Channel 227C2 allotment at Bend, Oregon, are 44–04–41 and 121–19–57. The reference coordinates for the Channel 271C3 allotment at Prineville, Oregon, are 44–20–36 and 120–44–06. *See* 68 FR 17003, April 8, 2003. With this action, the proceeding is terminated.

DATES: Effective April 17, 2006.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau, (202) 418–2177.

Procedural Matters: This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to the Congress and Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MB Docket No. 03–78 adopted March 1, 2006, and released March 3, 2006. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801 (a)(1)(A).

The *Report and Order* in MM Docket No. 00–87, substituted Channel 253C3 for Channel 252C3 at Bend in order to accommodate the ''drop-in'' allotment of Channel 251C1 to Madras, Oregon. *See Brightwood, Madras, Prineville and Bend, Oregon*, 16 FCC Rcd 18,893 (MMB 2001), *recon,* 20 FCC Rcd 14391 (MB 2005).

List of Subjects in 47 CFR Part 73

Radio, Radio Broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments, under Oregon, is amended by removing Channel 253C3 and adding Channel 253C1 at Bend.

■ 3. Section 73.202(b), the Table of FM Allotments, under Oregon, is amended by removing Channel 255C3 and adding Channel 271C3 at Prineville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–2606 Filed 3–21–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060317076–6076–01; I.D. 031606D]

RIN 0648–AU41

Fisheries Off West Coast States and in the Western Pacific; Hawaii-based Shallow-set Longline Fishery

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: This emergency rule removes the delay in effectiveness for closing the Hawaii-based shallow-set longline fishery as a result of interaction limits for sea turtles. The intended effect of the emergency action is to afford enhanced protection for sea turtles via timely closure of the fishery.

DATES: Effective March 20, 2006 until September 18, 2006. Comments must be received no later than 5 p.m., local time, on April 19, 2006.

ADDRESSES: You may submit comments, identified by ''AU41'' by any of the following methods:

• E-mail: *AU41Notice@noaa.gov*. Include ''AU41'' in the subject line of the message.

• Federal e-Rulemaking Portal: *www.regulations.gov*. Follow the instructions for submitting comments.

• Mail: William L. Robinson, Administrator, Pacific Islands Region (PIR), NMFS, 1601 Kapiolani Blvd. 1110, Honolulu, HI 96814.

In accordance with the Endangered Species Act, a Biological Opinion, dated

February 23, 2004, was prepared for this fishery which operates under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). Also, in accordance with NEPA, an Environmental Impact Statement (EIS) dated March 30, 2001, and a Supplemental Environmental Impact Statement (SEIS) dated March 5, 2004, were prepared for this fishery under the FMP. Copies of the Biological Opinion, EIS and SEIS are available from William L. Robinson (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Robert Harman, PIR, phone: 808–944–2271.

SUPPLEMENTARY INFORMATION:

Electronic Access

This emergency rule is accessible via the Internet at the Office of the **Federal Register**'s Web site at *www.gpoaccess.gov/fr/index.html*.

NMFS manages the pelagic longline fishery for swordfish, tunas and related species in the western Pacific region, according to the FMP, prepared by the Western Pacific Fishery Management Council (WPFMC) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and at 50 CFR part 660.

The regulations at § 660.33(b)(1) governing western Pacific pelagic fisheries establish maximum annual limits on the numbers of physical interactions that occur between longline fishing gear and sea turtles. These limits apply to physical interactions experienced by vessels registered under Hawaii longline limited-access permits while engaged in shallow-set longline fishing. There are calendar-year annual limits on physical interactions for two different turtle species, one for leatherback sea turtles set at 16, and one for loggerhead sea turtles set at 17.

Interactions with turtles are monitored using data from scientific observers placed by NMFS aboard all vessels engaged in shallow-set longline fishing. NMFS is required to maintain 100 percent observer coverage in the Hawaii shallow-set longline fishery under the 2004 Biological Opinion.

The current regulations at § 660.33(b)(2) prescribe that, as soon as the physical interaction limit for either of the two turtle species has been determined to have been reached in a given year, the shallow-set component of the Hawaii-based longline fishery must be closed by NMFS for the remainder of the calendar year, after giving permit holders at least seven days advance notice. Once that component of the fishery is closed, no vessel registered under a Hawaii longline limited-access permit may engage in shallow-set longline fishing north of the equator.

Based on the best information available on fishing activity levels and anticipated turtle interaction rates at the time when the regulations were first implemented, the seven-day delay in effectiveness offered by the advance notice provision was thought to be adequate to provide notice of the fishery closure to vessels at sea. The delay was intended to give NMFS adequate time to notify permit holders and vessel operators of the closure, and to give operators adequate time to cease fishing and begin to return to port, while still affording adequate protection to sea turtles. Recent fishing activity levels and rates of turtle interactions have, however, been higher than expected, resulting in the fishery quickly approaching the limit on turtle interactions and the associated adverse impacts to turtle species. As of 4 P.M. Hawaii Standard Time (HST), March 17, 2006, the fishery reached the annual limit of 17 loggerhead turtles. To respond to the recent greater fishing activity and turtle interaction rates, and to prevent additional adverse impacts to turtles, immediate implementation of the fishery closure is required.

Additionally, more effective means of providing notification to fishermen now exist. At the time when the current regulations were implemented, NMFS observers placed aboard longline vessels were not issued satellite telephones, and other communication methods were considered ineffective for notifying the fleet of a closure. Currently, however, NMFS observers carry satellite telephones and are placed on all vessels conducting shallow-set fishing trips. This makes immediate and effective communication possible between NMFS and each vessel at sea. When the fishery is closed, NMFS will notify the operator of each Hawaii-based vessel that is participating in the shallow-set fishery, directly via the communication devices available to the NMFS observer placed on the vessel, allowing for an immediate closure of the fishery, and resulting in enhanced protection of sea turtles. A notice of the fishery closure will also be published in the **Federal Register** and sent to each permit holder whose vessel is registered for use under a Hawaii limited access longline permit.

At its 131st meeting on March 14, 2006, the WPFMC voted to request the Secretary of Commerce to initiate, via an emergency rule, a framework for the immediate closure of the Hawaii shallow-set longline fishery upon reaching the interaction limits for loggerhead or leatherback turtles.

For the reasons stated above, this emergency rule meets NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997) because the emergency situation results from recently discovered circumstances, presents a serious management problem in the fishery, and the emergency rule realizes immediate benefits that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

NMFS issues this emergency rule, effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. The emergency rule may be extended for an additional 180 days, provided the public has had an opportunity to comment on the emergency rule and provided the WPFMC is actively preparing proposed regulations to address the emergency on a permanent basis. Public comments on this emergency rule are invited and will be considered in determining whether to extend this emergency rule.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. Recent fishing activity levels and rates of turtle interactions have been higher than expected. As of 4 P.M. HST, March 17, 2006, the fishery reached the annual limit of 17 loggerhead turtles. Based on this information, NMFS is concerned that, under the current seven-day notice requirement, there will be insufficient time between when the observer data are collected about the number of turtle interactions in the fishery and the time the fishery closure must be implemented. Thus, it is impracticable for NMFS to delay implementing this action. If not implemented quickly, the number of allowable interactions will likely be exceeded, thereby imposing harm to the public interest in protecting these threatened and endangered turtle species. For the same reasons, the AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3).

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

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: March 20, 2006.

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 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 1531 *et seq.*

■ 2. In § 660.22, paragraphs (ss) and (tt) are added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(ss) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set component of the longline fishery has been closed pursuant to § 660.33(b)(2), in violation of § 660.33(i).

(tt) Fail to immediately retrieve longline fishing gear upon receipt of actual notice that the shallow-set component of the longline fishery has been closed pursuant to § 660.33(b)(2), in violation of § 660.33(i).

* * * * *

■ 3. In § 660.33, paragraphs (b)(2)(i) and (ii) are suspended and paragraphs (b)(2)(iii) and (iv) are added to read as follows:

§ 660.33 Western Pacific longline fishing restrictions.

* * * * *

(b) * * *

(2) * * *

(iii) As soon as practicable, the Regional Administrator will sign the closure notice and provide actual notice via telephone, satellite telephone, radio, electronic mail, facsimile transmission, or post, to all vessel operators and holders of Hawaii longline limited access permits, that the shallow-set component of the longline fishery is closed and that shallow-set longline fishing north of the equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning on a specified date and time, and that all such fishing gear must be immediately removed from the water and the fishing trip terminated. As soon as practicable, the Regional Administrator will also file for publication at the Office of the Federal Register the notification that the sea turtle interaction limit has been reached. The notification will indicate that the Hawaii-based shallow-set component of the longline fishery is closed, and shallow-set longline fishing north of the equator by vessels registered for use under Hawaii longline limited access permits was prohibited beginning on the specified date and time when notice was provided, until the end of the calendar year in which the sea turtle interaction limit was reached.

(iv) Beginning on the fishery closure date and time indicated by the Regional Administrator in the notification provided to vessel operators and permit holders and published in the **Federal Register** under paragraph (b)(3)(iii) of this section, until the end of the calendar year in which the sea turtle interaction limit was reached, the Hawaii-based shallow-set component of the longline fishery shall be closed.

* * * * *

[FR Doc. 06–2801 Filed 3–20–06; 12:09 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 55
Wednesday, March 22, 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.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 41

[Docket No. 06–04]

RIN 1557–AC89

FEDERAL RESERVE SYSTEM

12 CFR Part 222

[Docket No. R–1250]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 334

RIN 3064–AC99

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 571

[No. 2006–06]

RIN 1550–AC01

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 717

FEDERAL TRADE COMMISSION

16 CFR Parts 660 and 661

RIN 3084–AA94

Interagency Advance Notice of Proposed Rulemaking: Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); National Credit Union Administration (NCUA); and Federal Trade Commission (FTC).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, OTS, NCUA, and FTC (the Agencies) request comment to gather information useful for developing the guidelines and regulations required by section 312 of the Fair and Accurate Credit Transactions Act (FACT Act). Pursuant to section 312, the Agencies, acting in consultation and coordination, must: Establish guidelines for use by persons that furnish information to consumer reporting agencies (furnishers) regarding the accuracy and integrity of the consumer information that they furnish to those agencies; and prescribe regulations that require furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also requires the Agencies jointly to prescribe regulations that identify the circumstances under which a furnisher shall be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on a consumer based on a direct request of the consumer.

DATES: Comments must be submitted by May 22, 2006.

ADDRESSES: Because paper mail in the Washington DC area and at the Agencies is subject to delay, please consider submitting your comments by e-mail. Commenters are encouraged to use the title ''Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies'' to facilitate the organization and distribution of the comments. Comments submitted to one or more of the Agencies will be made available to all of the Agencies. Interested parties are invited to submit comments to:

OCC: You should include OCC and Docket Number 06–04 in your comment. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- OCC Web Site: *http://www.occ.treas.gov.* Click on ''Contact the OCC,'' scroll down and click on ''Comments on proposed regulations.''
- E-mail Address: *regs.comments@occ.treas.gov.*
- Fax: (202) 874–4448.
- Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- Hand Delivery/Courier: 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, the OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review comments and other related materials by any of the following methods:

- Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- Viewing Comments Electronically: You may request e-mail or CD–ROM copies of comments that the OCC has received by contacting the OCC's Public Information Room at *regs.comments@occ.treas.gov.*
- Docket: You may also request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–1250, by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- FAX: (202) 452–3819 or (202) 452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical

reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN number by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *Comments@FDIC.gov.* Include the RIN number in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.
- Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3502 North Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by number 2006–06, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail address: *regs.comments@ots.treas.gov.* Please include number 2006–06 in the subject line of the message and include your name and telephone number in the message.
- Fax: (202) 906–6518.
- Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2006–06.
- Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2006–06.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to the OTS Internet site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

NCUA: You may submit comments by any of the following methods (please send comments by one method only):

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- NCUA Web Site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- E-mail: Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Advanced Notice of Proposed Rulemaking Part 717, Fair Credit Reporting—Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies'' in the e-mail subject line.
- Fax: (703) 518–6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.
- Hand Delivery/Courier: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration. Deliver to guard station in the lobby of 1775 Duke Street, Alexandria, VA 22314–3428, on business days between 8 a.m. and 5 p.m.

All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, VA 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov.*

FTC: Comments should refer to ''Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies, Project No. R611017,'' and may be submitted by any of the following methods. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1]

- E-mail: *https://secure.commentworks.com/ftc-FACTAfurnishers.* To ensure that the Commission considers an electronic comment, you must file it on the Web-based form found at this Web link and follow the instructions on that form.
- Federal eRulemaking Portal: *http://www.regulations.gov.* You may visit this Web site to read this request for public comment and to file an electronic comment. The Commission will consider all comments that regulations.gov forwards to it.
- Mail or Hand Delivery: A comment filed in paper form should refer, both in the text and on the envelope, to the name and project number identified above, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H (Annex C), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.htm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT:

OCC: Stephen Van Meter, Assistant Director, Community and Consumer Law Division, (202) 874–5750; Patrick T. Tierney, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Pamela Mount, National Bank Examiner, Compliance Department, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: David A. Stein, Counsel; Ky Tran-Trong, Senior Attorney, Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412; or Andrew Miller, Counsel, Legal Division, (202) 452–3428, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: David P. Lafleur, Policy Analyst, (202) 898–6569, or John Jackwood, Senior Policy Analyst, (202) 898–3991, Division of Supervision and Consumer Protection; Richard M. Schwartz, Counsel, (202) 898–7424, or Richard B. Foley, Counsel, (202) 898–3784, Legal Division; 550 17th St., NW., Washington, DC 20429.

OTS: Glenn S. Gimble, Senior Project Manager, Operation Risk, (202) 906–7158; or Richard Bennett, Counsel, Regulations and Legislation Division, (202) 906–7409, at 1700 G Street, NW., Washington, DC 20552.

NCUA: Regina Marie Metz, Esq., (703) 518–6561, fax (703) 837–2785, e-mail *rmetz@ncua.gov,* 1775 Duke St., Alexandria, VA 22314.

FTC: Ronald G. Isaac, or Clarke W. Brinckerhoff, Attorneys, (202) 326–3224, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

Consumer Reporting in the United States

The consumer reporting system in the United States is based largely on the submission of information by creditors and others to nationwide consumer reporting agencies that collect and maintain consumer information. There are also a number of smaller consumer reporting agencies that operate on a regional or local basis. These smaller agencies typically contract for the right to house some or all of the consumer data that they own on the computer systems of one or more of the major consumer reporting agencies. Consumer reporting agencies sell the information in their files to creditors and other subscribers who may be the users of the information, or who may be resellers that buy consumer reports to sell to other users.

Consumer reporting agencies maintain databases that contain detailed information about consumers' transactions. This information is widely used to determine consumers' eligibility for credit, employment, insurance, rental housing, and other products and services, as well as the terms on which credit, insurance, and other products and services may be offered. In addition to these general purpose consumer reporting agencies, there are consumer reporting agencies that collect and maintain data pertaining only to certain specialized activities, such as employment history, residential or tenant history, medical records or payments, check writing histories, or insurance claims.

Most of the information that consumer reporting agencies collect and maintain is provided voluntarily by furnishers. Furnishers may include such entities as banks, credit unions, finance companies, employers, insurance companies, doctors and hospitals, debt collectors, and landlords. Not all furnishers regularly provide information about consumers to consumer reporting agencies. Some furnishers provide only negative information, such as information about delinquent payments or loan defaults. Some may provide information to one or two of the nationwide consumer reporting agencies but not to all of them. Others may report only to one of the specialized consumer reporting agencies (such as a repository of check writing histories).

Because consumer reports are used to determine whether, and in some cases on what terms, consumers may be eligible for credit, insurance, employment, rental housing, and other important products, services, or benefits, the accuracy of the information in those reports is important. A number of studies have examined the accuracy of consumer report information.[2] While not purporting to be exhaustive or conclusive, these studies have identified a number of potential issues that may affect the accuracy of consumer report information, including stale account information, furnishing only negative information about an account, inaccurate or incomplete public record data, inaccurate or incomplete collection account data, and unreported credit limits.[3] These potential credit file issues may lower a consumer's credit score, decrease credit availability, and increase the cost of credit for certain consumers, particularly those who are new to the credit system, have very little credit, or have relatively low credit scores.

Existing FCRA Responsibilities of Furnishers

The Fair Credit Reporting Act (FCRA)[4] contains a number of provisions designed to enhance the accuracy and integrity of data in consumer reports, including the provisions to be implemented through the guidelines and regulations that are the subject of this Advance Notice of Proposed Rulemaking.

The FCRA contains standards for the collection, communication, and use of information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. Section 623 of the FCRA describes the responsibilities of persons that furnish information to consumer reporting agencies.[5] A person is prohibited from furnishing information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.[6] Section 623

[2] The Agencies are familiar with the details of these studies and, as discussed below, invite commenters to provide information in addition to the studies regarding the accuracy and integrity of consumer report information. *See* Robert B. Avery, Raphael W. Bostic, Paul S. Calem & Glenn B. Canner, *An Overview of Consumer Data and Credit Reporting,* Federal Reserve Bulletin, vol. 89, at 47–73 (February 2003); Robert B. Avery, Paul S. Calem, Glenn B. Canner & Shannon C. Mok, *Credit Report Accuracy and Access to Credit,* Federal Reserve Bulletin, vol. 90, at 297–322 (Summer 2004); Consumer Federation of America & National Credit Reporting Association, *Credit Score Accuracy and Implications for Consumers* (December 17, 2002), *at http://www.consumerfed.org/pdfs/121702CFA_NCRA_Credit_Score_Report_Final.pdf* (last visited February 13, 2006). *See also* footnote 11 in this notice describing the FTC's ongoing study of the accuracy and completeness of information contained in consumer reports prepared or maintained by consumer reporting agencies and the methods for improving the accuracy and completeness of such information and its first interim report to Congress. In addition, the Board issued a Request for Information in August 2004 in connection with a study on investigations of disputed consumer information reported to consumer reporting agencies. 69 FR 48494 (August 10, 2004). The Agencies have considered the responses to the Request for Information in developing this advance notice of proposed rulemaking.

[3] *Id.*

[4] 15 U.S.C. 1681–1681x.

[5] 15 U.S.C. 1681s–2.

[6] 15 U.S.C. 1681s–2(a)(1). A furnisher that clearly and conspicuously provides consumers with an address for submitting notices of dispute is subject to a different accuracy standard. If a consumer writes to that address to challenge the accuracy of any furnished information, and the information is, in fact, inaccurate, the furnisher must report only the correct information to consumer reporting agencies in the future.

also requires furnishers, among other things, to correct and update information furnished about a consumer to any consumer reporting agency in certain circumstances, to provide consumer reporting agencies with notice of certain consumer disputes and of accounts closed voluntarily by consumers, to provide credit reporting agencies with information regarding certain delinquent accounts, and to have in place reasonable procedures to prevent the refurnishing of information that has been blocked as a result of identity theft.[7]

A furnisher that is notified by a consumer reporting agency that information it furnished has been disputed by a consumer pursuant to section 611[8] of the FCRA must:

- Investigate the dispute;
- Review all relevant information provided by the consumer reporting agency about the dispute;
- Report its findings to the consumer reporting agency;
- Provide corrected information to all nationwide consumer reporting agencies that received the information, if the investigation shows the information to be incomplete or inaccurate; and
- Promptly modify, delete, or permanently block the reporting to a consumer reporting agency of an item of information disputed by a consumer that is found to be inaccurate, incomplete, or cannot be verified after an investigation.[9]

FACT Act Provisions To Be Implemented Through This Rulemaking

The FACT Act, enacted on December 4, 2003,[10] amended the FCRA to enhance the ability of consumers to combat identity theft, increase the accuracy of consumer reports, restrict the use of medical information in credit eligibility determinations, and allow consumers to exercise greater control regarding the type and amount of solicitations they receive.

Section 312 of the FACT Act amends section 623 of the FCRA and generally requires the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information that they furnish to consumer reporting agencies and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also requires the Agencies to issue regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in consumer reports based on a direct request from a consumer.

Guidelines and Regulations Concerning the Accuracy and Integrity of Information That Furnishers Provide to Consumer Reporting Agencies

Section 312(a) of the FACT Act adds a new subsection (e) to section 623 of the FCRA. Section 623(e)(1)(A) of the FCRA requires the Agencies to establish and maintain guidelines for use by each furnisher regarding the accuracy and integrity of the consumer information that the furnisher provides to consumer reporting agencies.[11] The Agencies are required to update these guidelines as often as necessary. Section 623(e)(1)(B) of the FCRA requires each Agency to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines established pursuant to section 623(e)(1)(A). The Agencies must consult and coordinate with one another so that, to the extent possible, the regulations published by each Agency are consistent and comparable.

Section 623(e)(3) of the FCRA sets forth criteria to be used by the Agencies in developing the accuracy and integrity guidelines. This provision directs the Agencies to:

- Identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;
- Review the methods (including technological means) used to furnish consumer information to consumer reporting agencies;
- Determine whether furnishers maintain and enforce policies to assure the accuracy and integrity of information furnished to consumer reporting agencies; and
- Examine the policies and processes employed by furnishers to conduct reinvestigations and correct inaccurate consumer information that has been furnished to consumer reporting agencies.

Regulations Concerning the Ability of a Consumer to Dispute Information Directly With a Furnisher

Section 312(c) of the FACT Act adds a new sub-paragraph (8) to section 623(a) of the FCRA. Section 623(a)(8) directs the Agencies jointly to prescribe regulations that identify the circumstances under which a furnisher is required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request by the consumer. In prescribing these regulations, the Agencies are directed to weigh:

- The regulations' benefits to consumers with the costs on furnishers and the credit reporting system;
- The impact on the overall accuracy and integrity of consumer reports of any such requirements;
- Whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any dispute; and
- The potential impact on the credit reporting process if credit repair organizations are able to circumvent the provisions in subparagraph G of section 623(a)(8), which state that the direct dispute rules shall not apply when credit repair organizations provide notices of dispute on behalf of consumers.

II. Request for Comments

The Agencies believe that, in advance of proposing guidelines and rules implementing section 312 of the FACT Act, it is appropriate to solicit public comment on issues relating to: (1) The criteria in section 623(e)(3) of the FCRA that the Agencies must consider when developing accuracy and integrity guidelines; (2) what constitutes reasonable policies and procedures for implementing the guidelines to ensure the accuracy and integrity of information that is furnished; and (3) the considerations in section

[7] 15 U.S.C. 1681s–2(a)(2)–(6).

[8] Section 611 of the FCRA generally permits a consumer to dispute the completeness or accuracy of any item in the consumer's credit file directly with a consumer reporting agency. Within five business days after the consumer reporting agency receives a notice of dispute from a consumer, the consumer reporting agency is required to provide notification of the dispute to any person who provided any item of disputed information. This notification of dispute must include all relevant information received from the consumer. Consumer reporting agencies must, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and record the current status of the disputed information, or delete the item from the consumer's credit file before the end of the 30-day period beginning on the date that the consumer reporting agency receives the notice of dispute from the consumer. 15 U.S.C. 1681i.

[9] 15 U.S.C. 1681s–2(b). The furnisher must complete these steps within the time period that Section 611 of the FCRA sets out for the consumer reporting agency to resolve the dispute, which is, ordinarily, 30 days after receipt of a notice of dispute from the consumer.

[10] Public Law No. 108–159, 117 Stat. 1952.

[11] The FACT Act also directs the FTC to ''conduct an ongoing study of the accuracy and completeness of information contained in consumer reports prepared or maintained by consumer reporting agencies and methods for improving the accuracy and completeness of such information.'' *See* section 319 of the FACT Act. The FTC submitted its first interim report to Congress on this study on December 9, 2004; *available at http://www.ftc.gov/reports/facta/041209factarpt.pdf* (last visited February 13, 2006).

623(a)(8)(B) that the Agencies must weigh when promulgating rules that identify circumstances when furnishers must reinvestigate disputes raised directly by consumers.

In particular, the Agencies invite comment, together with supporting documentation, on any or all of the issues presented below. Because these guidelines and regulations could affect any and all persons furnishing information to consumer reporting agencies, regardless of the type of furnisher or consumer reporting agency, the frequency of reporting, or the type of information being provided, we request that commenters explain, to the extent possible, how their comments might differ depending on the type of furnisher providing the information, the type of information being provided, the frequency of the reporting, or the type of consumer reporting agency to which the information is provided.

(A) Accuracy and Integrity Guidelines and Regulations

A1. Please describe, in detail, the types of errors, omissions, or other problems that may impair the accuracy and integrity of information furnished to consumer reporting agencies. Please specify whether any such problems result in credit file information that (1) is incorrect, including inaccurate account information, public record data, or collection account data; (2) is out of date or includes stale account information; (3) is associated with the wrong consumer; (4) omits potentially significant information about the consumer account or transaction, such as credit limits for or positive information about the account; (5) is duplicative; (6) may mislead users of consumer reports; or (7) otherwise adversely affects consumers, particular types of consumers, or the credit reporting system. Finally, please describe the significance of such problems for consumers, particular groups of consumers (*e.g.*, borrowers with poor or limited credit histories), users of consumer reports, and the credit reporting system.

A2. Please describe, in detail, the patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies. Relevant patterns, practices, and specific forms of activity may relate to any aspect of the information gathering and reporting process, such as the methods by which furnished information is collected, verified, edited, standardized, and transferred. They may be of general applicability or relate to specific types of furnishers, such as financial institutions, creditors, or collection agencies, or specific types of consumer reporting agencies, such as credit bureaus or tenant screening services. Examples of patterns, practices, and specific forms of activity that may cause these problems include, but are not limited to, the sale of consumer debts to and among collection agencies, the conversion or translation of furnished information into a standard form, and the frequency, timing, categories, and content of information that is furnished to consumer reporting agencies.

A3. Please describe, in detail, any business, economic, or other reasons for the patterns, practices, and specific forms of activity described in item A2.

A4. Please describe, in detail, the policies and procedures that a furnisher should implement and maintain to identify, prevent, or mitigate those patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to a consumer reporting agency.

A5. Please describe, in detail, the methods (including technological means) used to furnish consumer information to consumer reporting agencies. Please describe, in detail, how the use of these methods can either enhance or compromise the accuracy and integrity of consumer information that is furnished to consumer reporting agencies.

A6. Please describe, in detail, whether and to what extent furnishers maintain and enforce policies and procedures to ensure the accuracy and integrity of information furnished to consumer reporting agencies, including a description of any policies and procedures that are maintained and enforced, such as policies and procedures relating to data controls, points of failure, account termination, the re-reporting of deleted consumer information, the reporting of the deferral or suspension of payment obligations in unusual circumstances, such as natural disasters, or the frequency, timing, categories, and content of information furnished to consumer reporting agencies. Please assess the effectiveness of these policies and procedures and provide suggestions on how their effectiveness might be improved or enhanced. Please describe whether particular policies or procedures are especially necessary or relevant to particular methods of furnishing information. Please also describe how such policies and procedures are monitored and evaluated to ensure their effectiveness.

A7. Please describe, in detail, any methods (including any technological means) that a furnisher should use to ensure the accuracy and integrity of consumer information furnished to a consumer reporting agency.

A8. Please describe, in detail, the policies, procedures, and processes used by furnishers to conduct reinvestigations and to correct inaccurate consumer information that has been furnished to consumer reporting agencies. Please include a description of the policies and procedures that furnishers use to comply with the requirement that they ''review all relevant information provided by the consumer reporting agency'' as stated in section 623(b)(1)(B) of the FCRA.

A9. Please describe, in detail, the policies, processes, and procedures that furnishers should use to conduct reinvestigations and to correct inaccurate consumer information that has been furnished to consumer reporting agencies.

A10. Please describe, in detail, the policies and procedures of consumer reporting agencies for ensuring the accuracy and integrity of information received from furnishers, including any policies, procedures, or other requirements imposed on furnishers (by contract or otherwise) to ensure the accuracy and integrity of information furnished to consumer reporting agencies. Please describe specifically whether and to what extent those policies, procedures, or other requirements address particular problems that may affect information accuracy and integrity such as the accuracy of consumer address and other identifying information, updating records to link the correct consumer(s) to account information, the impact of different reporting formats, and duplicate reporting by collection agencies. Please also describe whether particular policies or procedures are especially necessary or relevant to particular types of furnishers.

(B) Direct Dispute Regulations

B1. Please identify the circumstances under which a furnisher should (or alternatively, should not) be required to investigate a dispute concerning the accuracy of information furnished to a consumer reporting agency based upon a direct request from the consumer, and explain why.

B2. Please describe any benefits or costs to consumers from having the right to dispute information directly with the furnisher, rather than through a consumer reporting agency, in some or all circumstances. Please address the

circumstances under which direct disputes with furnishers would yield more, fewer, or the same benefits or costs for consumers as disputes that are first received and processed through the consumer reporting agencies and then routed to furnishers for investigation. Please quantify any benefits or costs, if possible.

B3. Please describe any benefits to furnishers, consumer reporting agencies, or the credit reporting system that may result if furnishers were required to investigate disputes based on direct requests from consumers in some or all circumstances. Please quantify any benefits, if possible.

B4. Please describe any costs, including start-up costs, to furnishers and any costs to consumer reporting agencies or the credit reporting system, of requiring a furnisher to investigate a dispute based on a direct request by a consumer in some or all circumstances. Please address the circumstances under which direct disputes with furnishers would cost more, less, or the same to process, excluding start-up costs, as compared to disputes that are first received and processed through the consumer reporting agencies and then routed to furnishers for investigation. Please quantify any costs, if possible. To the extent applicable, please discuss the percentage of disputes processed through consumer reporting agencies that (1) involve an error by the consumer reporting agency (rather than a problem with the information provided by the furnisher), (2) are determined to be frivolous or irrelevant, or (3) result in changes to consumer credit files. Does the FCRA's section 623(a)(8)(F)(ii) timing requirement for a Notice of Determination that a consumer dispute is frivolous or irrelevant impose additional costs? If so, please provide quantitative data about such costs.

B5. Please discuss whether it is the current practice of furnishers to investigate disputes about the accuracy of information furnished to a consumer reporting agency based on direct requests by consumers. For those furnishers that currently investigate such direct disputes, please identify and discuss the following:

B5(a).The circumstances under which the furnisher will and will *not* investigate such a direct dispute;

B5(b).The furnisher's experience with receiving and identifying direct disputes submitted by credit repair organizations;

B5(c).The differences between the furnisher's existing procedures for resolving direct disputes (including time frames and communications with the consumer) and the procedures set forth in section 623(a)(8) of the FCRA, and the costs and other implications of modifying those procedures to conform to section 623(a)(8);

B5(d).Whether the percentage of direct disputes for a portfolio of accounts varies for different lines of business (*e.g.*, mortgage, auto lending, unsecured credit);

B5(e). Whether the costs of resolving direct disputes varies for different lines of business; and

B5(f).The percentage of disputes received directly from consumers and from the consumer reporting agencies, the percentage of duplicate disputes that are received both directly from consumers and the consumer reporting agencies, and any practices designed to detect and process such duplicate disputes.

B6. Please describe the impact on the overall accuracy and integrity of consumer reports if furnishers were required, under some or all circumstances, to investigate disputes concerning the accuracy of information furnished to consumer reporting agencies based on the direct request of a consumer.

B7. Please describe the circumstances in which direct contact by the consumer with the furnisher would likely result, or alternatively, would likely *not* result, in the most expeditious resolution of any dispute concerning the accuracy of information furnished to a consumer reporting agency.

B8. Section 623(a)(8)(G) of the FCRA provides that any direct dispute requirement would not apply to any notice of dispute submitted by, prepared on behalf of the consumer by, or submitted on a form supplied by, a credit repair organization. In prescribing the regulations mandated under section 623(a)(8), section 623(a)(8)(b)(iv) requires the Agencies to weigh the ''potential impact on the credit reporting process if credit repair organizations * * * are able to circumvent the prohibition in subparagraph (G) of that section.'' Please describe the potential impact on the credit reporting process if a person that meets the definition of a credit repair organization is able to circumvent section 623(a)(8)(G).

Small Institution Comment Request

The Agencies invite comment on the impact on small institutions of procedures that would enhance the accuracy and integrity of information furnished to consumer reporting agencies. The Agencies recognize that small institutions operate with more limited resources than larger institutions and may present a different risk profile. Thus, the Agencies specifically request comment on the impact of a future proposal on small institutions' current resources and available personnel with the requisite expertise, and whether the goals of any proposal could be achieved, for small institutions, through an alternative approach.

Request for Comment From Furnishers Other Than Depository Institutions and From Consumer Reporting Agencies Other Than Credit Bureaus

The Agencies invite comments from businesses other than depository institutions that furnish information to credit bureaus. These may include certain mortgage lenders, debt collectors, consumer finance companies, and retailers. The Agencies also invite comments from persons who furnish information to other types of consumer reporting agencies, such as consumer reporting agencies that collect information for the purpose of making decisions regarding insurance, employment or tenant screening, or check verification. Similarly, the Agencies request comments from consumer reporting agencies, including nontraditional consumer reporting agencies that may only provide information to a limited class of businesses (*e.g.*, medical information providers and tenant screening services).

Request for Comment From Individuals and Public Interest and Consumer Advocacy Organizations

The Agencies invite comments from individuals and public interest and consumer advocacy organizations on the effect that any procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies may have on consumers and the credit reporting industry.

Economic Growth and Regulatory Paperwork Reduction Act of 1996 Comment Request

Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) requires the Federal banking agencies and NCUA, not less frequently than once every 10 years, to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. Consistent with the goal of section 2222 of the EGRPRA, the Federal banking agencies and NCUA invite comment on how they might best achieve the goals of section 312 while minimizing any possible regulatory burden on furnishers. Specifically, the Federal banking agencies and NCUA

request comment on how to apply the criteria they must consider when developing the accuracy and integrity guidelines (*see* section 623(e)(3) of the FCRA) so as not to create unnecessary or unduly burdensome requirements. Also, the Federal banking agencies and NCUA request comment on how to weigh the considerations relating to when furnishers must reinvestigate disputes raised directly by consumers (*see* section 623(a)(8)(B) of the FCRA) so as not to create unnecessary or unduly burdensome requirements for furnishers.

Executive Order 12866

OCC and OTS: The OCC and OTS do not know whether the guidelines and regulations they will propose will constitute a significant regulatory action under the Executive Order 12866. Executive Order 12866 requires preparation of an analysis for agency actions that are ''significant regulatory actions.'' ''Significant regulatory actions'' are actions that may result in regulations that are likely to:

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.[12]

This ANPR neither establishes nor proposes any regulatory requirements. Because this ANPR does not contain a specific proposal, information is not available with which to prepare a regulatory analysis. The OCC and OTS will each prepare a regulatory analysis if they proceed with a proposed rule that constitutes a significant regulatory action.

Accordingly, the OCC and OTS solicit comment, information, and data on the potential effects on the economy of any guidelines and regulations that commenters may recommend. The OCC and OTS encourage commenters to provide information about estimates of costs, benefits, other effects, or any other information, particularly costs to implement the statutory requirements if institutions are already meeting any of those requirements (*e.g.*, documenting policies and procedures, monitoring, and training). In addition, the OCC and OTS ask commenters to identify or estimate start-up or non-recurring costs separately from costs or effects they believe would be ongoing. Also, the OCC and OTS ask commenters to provide data on the total number of consumer disputes reported annually and the per-unit cost to resolve each dispute. Quantitative information would be the most useful. The OCC and OTS will carefully consider the costs and benefits associated with this regulatory action.

Dated: March 15, 2006.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 13, 2006.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, the 10th day of February, 2006. Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: February 6, 2006.

By the Office of Thrift Supervision.

John M. Reich,

Director.

By the National Credit Union Administration Board on March 13, 2006.

Mary Rupp,

Secretary of the Board.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 06–2758 Filed 3–21–06; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–10–P; 6720–01–P; 7535–01–P; 6750–01–P

[12] Executive Order 12866 (September 30, 1993), 58 FR 51735 (October 4, 1993), as amended by Executive Order 13258 (February 26, 2002), 67 FR 9385 (February 28, 2002). A ''regulatory action'' is ''any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.'' Executive Order 12866, section 3(e).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23645; Directorate Identifier 2006–CE–04–AD]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries MU–2B Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Mitsubishi Heavy Industries (MHI) MU–2B series airplanes. This proposed AD would require you to incorporate text from the service information into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This proposed AD results from a recent safety evaluation that used a data-driven approach to analyze the design, operation, and maintenance of the MU–2B series airplanes in order to determine their safety and define what steps, if any, are necessary for their safe operation. Part of that evaluation was the identification of unsafe conditions that exist or could develop on the affected type design airplanes. We are issuing this proposed AD to detect and correct improper rigging of the propeller feathering linkage. The above issue, if uncorrected, could result in degraded performance and poor handling qualities with consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by May 2, 2006.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Mitsubishi Heavy Industries, Ltd., 4951 Airport Parkway, Suite 800, Addison, Texas 75001; telephone: 972–934–5480; facsimile: 972–934–5488 for the service information identified in this proposed AD.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Rao Edupuganti, Aerospace Engineer, ASW–150, Fort Worth Aircraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76193; telephone (817) 222–5284; fax (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, ''FAA–2006–23645; Directorate Identifier 2006–CE–04–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Discussion

Recent accidents and the service history of the Mitsubishi MU–2B series airplanes prompted FAA to conduct an MU–2B Safety Evaluation. This evaluation used a data-driven approach to analyze the design, operation, and maintenance of the MU–2B series airplanes in order to determine their safety and define what steps, if any, are necessary for their safe operation.

The safety evaluation provided an in-depth review and analysis of MU–2B accidents, incidents, safety data, pilot training requirements, engine reliability, and commercial operations. In conducting this evaluation, the team employed new analysis tools that provided a much more detailed root cause analysis of the MU–2B problems than was previously possible.

Part of that evaluation was the identification of unsafe conditions that exist or could develop on the affected type design airplanes. Field reports indicate an unsafe condition of improper rigging and/or adjustment of the propeller feathering linkage. Service centers found the unsafe condition during inspections. Incorrect adjustment of the feathering linkage could result in the linkage not pulling the feather valve far enough for the feathering system to function as designed. In the event of a negative torque sensing (NTS) failure, coupled with incorrect adjustment of the feathering linkage, an inability to feather the propeller could result in asymmetric drag and control difficulties that are outside of the operational envelope of the aircraft.

This condition, if not corrected, could result in degraded performance and poor handling qualities with consequent loss of control of the airplane.

Relevant Service Information

We have reviewed the following Mitsubishi Heavy Industries, Ltd. service information:

- Service Bulletin No. 229, dated February 20, 1996; and
- Service Bulletin No. 090/76–003, dated January 22, 1997.

The service information describes procedures for inspecting the feather valve and linkage function.

Foreign Airworthiness Authority Information

The MU–2B series airplane was initially certificated in 1965 and again in 1976 under two separate type certificates that consist of basically the same type design. Japan is the State of Design for TC No. A2PC, and the United States is the State of Design for TC No. A10SW. The affected models are as follows (where models are duplicated, specific serial numbers are specified in the individual TCs):

Type certificate	Affected models
A10SW	MU–2B–25, MU–2B–26, MU–2B–26A, MU–2B–35, MU–2B–36, MU–2B–36A, MU–2B–40, and MU–2B–60.
A2PC	MU–2B, MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–30, MU–2B–35, and MU–2B–36.

The Japan Civil Aviation Bureau, the airworthiness authority for Japan, issued Japanese AD No. TCD 4379–96, dated February 20, 1996, to ensure the continued airworthiness of the airplanes in Japan.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD to address an unsafe condition that we determined is likely to exist or develop on other products of this same type design. The proposed AD would require you to incorporate information from the service bulletins into the Limitations Section of the FAA-approved AFM.

The Agency is committed to updating the aviation community of expected costs associated with the MU–2B series airplane safety evaluation conducted in 2005. As a result of that commitment, the accumulating expected costs of all ADs related to the MU–2B series airplane safety evaluation may be found in the Final Report section at the following Web site: *http://www.faa.gov/aircraft/air_cert/design_approvals/small_airplanes/cos/mu2_foia_reading_library/.*

Differences Between the Proposed AD and Service Information

The compliance time in the proposed AD is different from the compliance times in the service information, and the proposed AD requires the insertion of text into the Limitations Section of the AFM. The requirements of the proposed AD, if adopted as a final rule, would take precedence over the provisions in the service information.

Costs of Compliance

We estimate that this proposed AD affects 397 airplanes in the U.S. registry.

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $80 = $80	Not applicable	$80	$31,760

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the Dockets

You may examine the docket that contains the proposal, any comments received and any final disposition on the Internet at *http://dms.dot.gov*, or in person at the DOT Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the Docket Management Facility receives them.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Mitsubishi Heavy Industries: Docket No. FAA–2006–23645; Directorate Identifier 2006–CE–04–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this proposed airworthiness directive (AD) action by May 2, 2006.

Affected ADs

(b) None.

Applicability

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

Type certificate	Models	Serial Nos.
(1) A2PC	MU–2B, MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, and MU–2B–26.	008 through 312, 314 through 320, and 322 through 347.
(2) A2PC	MU–2B–30, MU–2B–35, and MU–2B–36	501 through 651, 653 through 660, and 662 through 696.
(3) A10SW	MU–2B–25, MU–2B–26, MU–2B–26A, and MU–2B–40	313SA, 321SA, and 348SA through 459SA.
(4) A10SW	MU–2B–35, MU–2B–36, MU–2B–36A, and MU–2B–60	652SA, 661SA, and 697SA through 1569SA.

Unsafe Condition

(d) This AD results from a recent safety evaluation that used a data-driven approach to analyze the design, operation, and maintenance of the MU–2B series airplanes in order to determine their safety and define what steps, if any, are necessary for their safe operation. Part of that evaluation was the identification of unsafe conditions that exist or could develop on the affected type design airplanes. The actions specified in this AD are intended to detect and correct improper rigging of the propeller feathering linkage. The above issue if uncorrected could result in degraded performance and poor handling qualities with consequent loss of control of the airplane.

Compliance

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

Actions	Compliance	Procedures
Incorporate the following information into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM): (1) For airplanes listed in Type Certificate No. A2PC insert pages 3 and 4 from Mitsubishi Heavy Industries (MHI) MU–2 Service Bulletin No. 229, dated February 20, 1996. (2) For airplanes listed in Type Certificate No. A10SW insert page 3 of 3 from MHI MU–2 Service Bulletin No. 090/76–003, dated January 22, 1997.	Within 100 hours time-in-service after the effective date of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the information into the AFM as specified in paragraph (e) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

Note: The language in the service information states the procedure as an ''inspection,'' but the procedure is a ''pilot check.''

Alternative Methods of Compliance (AMOCs)

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

(g) For information on any already approved alternative methods of compliance or for information pertaining to this AD, contact Rao Edupuganti, Aerospace Engineer, ASW–150, Fort Worth ACO, 2601 Meacham Blvd., Fort Worth, Texas 76193; telephone (817) 222–5284; fax (817) 222–5960.

Related Information

(h) Japan Civil Aviation Bureau Airworthiness Directives No. TCD 4379–96, dated February 20, 1996; and MHI Service Bulletins No. 229, dated February 20, 1996; and No. 090/76–003, dated January 22, 1997, also address the subject of this AD.

(i) To get copies of the documents referenced in this AD, contact Mitsubishi Heavy Industries, Ltd., 4951 Airport Parkway, Suite 800, Addison, Texas 75001; telephone: 972–934–5480; facsimile: 972–934–5488. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. The docket number is Docket No. FAA–2006–23645; Directorate Identifier 2006–CE–04–AD.

Issued in Kansas City, Missouri, on March 16, 2006.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–4123 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[REG–122380–02]

RIN 1545–BA72

Regulations Governing Practice Before the Internal Revenue; Correction

AGENCY: Office of the Secretary, Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Wednesday, February 8, 2006 (71 FR 6421). These proposed regulations affect individuals who practice before the Internal Revenue Service (Circular 230). The proposed amendments modify the general standards of practice before the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Brinton T. Warren at (202) 622–7800 (not toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing (REG–122380–02) that are the subject of these corrections are under 31 CFR sections 10.1, 10.2, 10.5, 10.6, 10.7, 10.22, 10.25, 10.27, 10.29, 10.34, 10.35, 10.50, 10.51, 10.52, 10.60, 10.61, 10.62, 10.63, 10.65, 10.68, 10.70, 10.71, 10.72, 10.73, 10.76, 10.77, 10.78, 10.82, 10.90 and 10.91.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing (REG–122380–02) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–122380–02), that was the subject of FR Doc. 06–1106, is corrected as follows:

1. On page 6421, column 3, the regulation heading, line 5, (RIN 1545–AY05'' is corrected to read ''RIN 1545–BA72''.

2. On page 6421, column 3, under the paragraph heading ''DATES'', line 3, the language, ''by April 10, 2006. Outlines of topics to'' is corrected to read ''by April 28, 2006. Outlines of topics to''.

3. On page 6421, column 3, under the paragraph heading ''DATES'', the last line, the language, ''received by April 10, 2006.'' is corrected to read ''received by May 31, 2006.''.

4. On page 6426, column 2, in the preamble under the paragraph heading ''Comments and Public Hearing'', third paragraph, line 5, the language, ''comments by April 10, 2006 and an'' is corrected to read ''comments by April 28, 2006 and an''.

5. On page 6426, column 2, in the preamble under the paragraph heading ''Comments and Public Hearing'', third paragraph the last line, the language, ''April 10, 2006. A period of 10 minutes'' is corrected to read ''May 31, 2006. A period of 10 minutes''.

Richard S. Carro,

Senior Advisor to the General Counsel.

[FR Doc. E6–4105 Filed 3–21–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–015]

RIN 1625–AA08

Special Local Regulations for Marine Events; Onslow Bay, Beaufort Inlet, Morehead City State Port, Beaufort Harbor and Taylor Creek, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the ''Pepsi Americas' Sail 2006'', tall ships parade and race to be held on Onslow Bay, Beaufort Inlet, inland waters of the Morehead City State Port and Beaufort Waterfront. This special local regulation is necessary to provide for the safety of life on navigable waters during the event. This proposed action is intended to restrict vessel traffic in segments of coastal North Carolina in the vicinity of Onslow Bay, Beaufort Inlet, inland waters of Morehead City State Port and Beaufort Harbor during the parade of sail and tall ship race.

DATES: Comments and related material must reach the Coast Guard on or before April 21, 2006.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO C.D. Humphrey, U.S. Coast Guard Sector North Carolina, at (252) 247–4525.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you

do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–015), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

During the period 30 June to July 5, 2006, Pepsi Americas' Sail 2006 LLC will host the North Carolina port call of the ''Pepsi Americas' Sail 2006''. A parade of sails and tall ships racing event are planned during this period to be conducted on the waters adjacent to Onslow Bay, Beaufort Inlet and the inland waters of Morehead City State Port and Beaufort Harbor, North Carolina. The first event will be the ''Tall Ships Parade of Sails'' on July 1, 2006 that will commence in Anchorage Area ''ALFA'' as depicted on NOAA Chart 11545 ''Beaufort Inlet and Part of Core Sound'', and will enter Beaufort Inlet Channel at Beaufort Inlet Channel Lighted Buoy 7 and Beaufort Inlet Channel Lighted Buoy 8, and will proceed inbound to the Morehead City State Port turning basin thence to Beaufort Harbor Channel to Beaufort Harbor waterfront. The second event will be the ''Tall Ships Race'', on July 3, 2006 that will take place on Onslow Bay from Beaufort Inlet Channel and continuing west approximately 11 nautical miles to a line drawn along longitude 076–54′ W. Because of the danger posed by numerous sailing vessels maneuvering in close proximity of each other during the proposed parade and race, special local regulations are necessary. For the safety concerns noted and to address the need for vessel control and vessel security, traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of Onslow Bay, Beaufort Inlet Channel, Morehead City State Port, Beaufort Harbor Channel and Taylor Creek. The July 1, 2006 ''Tall Ships Parade of Sail'' consist of Class ''A'', ''B'' and ''C'' tall ships participating in a carefully organized and highly publicized, international tall ship parade. The tall ship division of classes include Class ''A'', square-rigged vessels and all other vessels over 131 feet in length overall. Class ''B'' vessels are comprised of traditional rigged vessels with a length overall of less than 131 feet and with a waterline length of at least 30 feet. Class ''C'' vessels are modern rigged vessels with a length overall of less than 131 feet and with a waterline length of at least 30 feet, not carrying spinnaker like sails. The parade will consist of tall ships maneuvering in a predetermined area within anchorage area ''ALFA'' immediately adjacent and east of Beaufort Inlet Channel Lighted Buoy 8 and Beaufort Inlet Channel Lighted Buoy 10. The Ships will enter Beaufort Inlet Channel at Beaufort Inlet Lighted Buoy 7 and Beaufort Inlet Lighted Buoy 8, they will proceed inbound maintaining a 400 yard separation distance through Beaufort Inlet Channel to the Morehead City State Port turning basin, Class A ships will moor at the State Port facilities, Class B and C ships will reverse course and exit the turning basin enroute to Beaufort Harbor Channel and will moor at the Beaufort Waterfront on Taylor Creek. A fleet of spectator vessels is anticipated to gather nearby to view the parade. Because of the danger posed by numerous sailing vessels maneuvering in close proximity of each other during the proposed marine event, special local regulations are necessary. For the safety concerns noted and to address the need for vessel control and vessel security, traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels. The duration of the proposed parade of sails is anticipated to be approximately five hours.

The July 3, 2006 ''Tall Ships Race'' will consist of participation from the visiting international Class ''B'' tall ships. The race will be in a predetermined area immediately west of Beaufort Inlet Channel extending approximately 11 nautical miles to a line drawn along longitude 076–54′ W. A fleet of spectator vessels is anticipated to gather nearby to view the race. Because of the danger posed by many sailing vessels maneuvering in close proximity of each other during the race, special local regulations are necessary. For the safety concerns noted and to address the need for vessel control, traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels. The duration of the proposed tall ships race is anticipated to be approximately six hours.

The proposed temporary special local regulations will be enforced from 6:30 a.m. to 1 p.m. on July 1, 2006 for the ''Tall Ships Parade of Sails''; and from 10:30 a.m. to 5:30 p.m. on July 3, 2006 for the ''Tall Ships Class B race''. These regulations will restrict general navigation in the regulated area during the marine events. The Coast Guard, at its discretion, when practical, will allow the passage of vessels when the parade or race is not taking place. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area during the enforcement period. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed regulation will prevent traffic from transiting a segment of the Onslow Bay, Beaufort Inlet, Morehead City State Port and Beaufort Harbor during these events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be enforced. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, area newspapers and local radio stations, so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit these sections of the Onslow Bay, Beaufort Inlet, Morehead City State Port, Beaufort Harbor Channel and Taylor Creek during these events.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Although the regulated area will apply to two separate segments within and around the waters of Onslow Bay, Beaufort Inlet, Morehead City State Port and Beaufort Harbor, traffic may be allowed to pass through the regulated areas with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through a regulated area during an event, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the event. Although this regulation prevents traffic from transiting the Onslow Bay, Beaufort Inlet, Morehead City State port and Beaufort Harbor Bay during these event, the effect of this regulation will not be significant because of its limited duration. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969

(NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

2. Add a temporary § 100.35–T06–015 to read as follows:

§ 100.35–T06–015 Onslow Bay, Beaufort Inlet, Morehead City State Port, Beaufort Harbor and Taylor Creek near Morehead City NC.

(a) *Regulated area* includes two segments within and around the waters of the Onslow Bay, Beaufort Inlet, Morehead City Turning Basin, Beaufort Harbor and Taylor Creek North Carolina.

(1) The first segment for the ''Parade of Sail'' is bounded by a line drawn from a position at latitude 34°39′36″ N, longitude 076°37′52″ W, thence southerly to a position at latitude 34°37′52″ N, longitude 076°37′52″ W, thence westerly to a position at latitude 34°37′36″ N, longitude 076°40′17″ W, thence southerly to a position at latitude 34°36′50″ N, longitude 076°40′42″ W, thence westerly to a position at latitude 34°36′57″ N, longitude 076°41′25″ W, thence northerly parallel to Beaufort Inlet Channel to latitude 34°40′37″ N, longitude 076°40′32″ W, thence northeasterly to latitude 34°41′21″ N, longitude 076°40′11″ W, thence northwesterly parallel to Cutoff Channel to latitude 34°41′43″ N, longitude 076°40′21″ W, thence northwesterly parallel to Morehead City Channel to latitude 34°42′46″ N, longitude 076°42′02″ W, thence westerly to latitude 34°42′46″ N, longitude 076°42′12″ W, thence northerly to latitude 34°42′54″ N, longitude 076°42′13″ W, thence easterly along Morehead City State Port berth seven, six, five and four to latitude 34°42′52″ N, longitude 076°41′33″ W, thence southeasterly to latitude 34°42′35″ N, longitude 076°41′20″ W, thence southeasterly parallel to Morehead City Channel to latitude 34°42′19″ N, longitude 076°40′49″ W at the entrance to Beaufort Harbor Channel, thence along the western bank of Beaufort Harbor Channel to latitude 34°42′54″ W, longitude 076°40′44″ W, thence easterly to the southern tip of Pivers Island, latitude 34°42′54″ N, longitude 076°40′24″ W, thence northerly along the shoreline of Pivers Island to latitude 34°43″08″ N, longitude 076°40′19″ W, thence northerly to intersection of the Beaufort Bascule Bridge and the shoreline at latitude 34°43′21″ N, longitude 076°40′12″ W, thence northerly along the shoreline to latitude 34°43′38″ N, longitude 076°40′17″ W, thence northwesterly to latitude 34°43′47″ N, longitude 076°40′22″ W, thence northeasterly to latitude 34°43′55″ N, longitude 076°40′15″ W, thence southerly along the shoreline to latitude 34°43′42″ N, longitude 076°40′04″ W, thence southerly parallel to Gallants Channel to the intersection of the Beaufort Bascule Bridge and the shoreline at latitude 34°43′21″ N, longitude 076°40′05″ W, thence southerly to Beaufort Waterfront at latitude 34°43′07″ N, longitude 076°40′10″ W, thence southeasterly along Beaufort waterfront to latitude 34°42′57″ N, longitude 076°39′55″ W, thence south to Carrot Island latitude 34°42′45″ N, longitude 076°39′55″ W, thence westerly following the shore line of Carrot Island to latitude 34°42′31″ W, longitude 076°40′44″ W, thence southeasterly to latitude 34°41′50″ N, longitude 076°40′08″ W, thence southerly to the western tip of Shackleford Banks at latitude 34°41′18″ N, longitude 076°39′57″ W, thence southerly to latitude 34°40′30″ N, longitude 076°39′50″ W, thence southerly parallel to Beaufort Inlet Channel to latitude 34°39′35″ N, longitude 076°40′00″ W, thence east to the point of origin.

(2) The second segment for the ''Tall Ships Race'' is bounded by a line drawn from a position at latitude 34°40′36″ N, longitude 076°41′00″ W, thence westerly parallel to Bogue Banks to latitude 34°40′21″ N, longitude 076°52′12″ W, thence southwesterly to latitude 34°39′00″ N, longitude 076°53′06″ W, thence southeasterly to latitude 34°33′18″ N, longitude 076°42′33″ W, thence northeasterly to latitude 34°34′18″ N, longitude 076°41′27″ W, thence northerly to the point of origin.

(3) All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) Coast Guard Patrol Commander means any commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) Official Patrol means any person or vessel authorized by the Coast Guard Patrol Commander or approved by Commander, Coast Guard Sector North Carolina.

(3) Participant includes all vessels participating in the Pepsi Americas' Sail 2006 under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

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

(2) Any person in the regulated area must stop immediately when directed to do so by any Official Patrol and then proceed only as directed.

(3) The operator of any vessel in the regulated area must stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

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

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

(d) *Enforcement period.* This section will be enforced from 6:30 a.m. to 1 p.m. on July 1, 2006, for the ''Parade of Sails''; and from 10:30 a.m. to 5:30 p.m. on July 3, 2006 for the ''Tall Ships Race''. If the ''Tall Ships Race'' is postponed due to inclement weather, then the proposed temporary special local regulations will be enforced the same time period during one of the next two days, July 4, 2006 through July 5, 2006.

Dated: March 3, 2006.

Larry L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E6–4089 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–004]

RIN 1625–AA00

Safety Zone; Greater Cleveland Area Triathlon

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of a safety zone for the annual Greater Cleveland area Triathlon located in the Captain of the Port Buffalo Zone. This safety zone is necessary to provide for the safety of life during the swimming portion of this event. This action is intended to restrict vessel traffic within the immediate vicinity of the event from 6 a.m. (local) until noon (local) on the 12th and 13th of August 2006.

DATES: Comments and related material must reach the Coast Guard on or before April 21, 2006.

ADDRESSES: You may mail comments and related material to MSU Cleveland, 1055 East 9th Street, Cleveland, OH 44114. MSU Cleveland maintains the public docket for this rule making. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket CGD09–06–004, will become part of this docket and will be available for inspection or copying at MSU Cleveland, 1055 East 9th Street, Cleveland, OH 44114 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. If you do so, please include your name and address, identify the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This safety zone is necessary to manage vessel traffic in order to provide for the safety of life and property on navigable waters during the event. The combination of swimmers and the large number of inexperienced, recreational boaters that transit this area could easily result in serious injuries or fatalities.

Discussion of Proposed Rule

This safety zone is necessary to provide for the safety of life on navigable waters during the swimming portion of this event. This action is intended to restrict vessel traffic within the immediate vicinity of the event in a portion of Lake Erie. This safety zone is extending the currently established swim zone at Headlands Beach State Park in Painesville Township, Ohio. The safety zone will include all waters of Lake Erie within a line drawn from 41°45′19″ N, 081°17′38″ W to 41°45′22″ N, 081°17′46″ W then easterly to 41°45′55″ N, 081°17′09″ W and thence to 41°45′50″ N, 081°17′01″ W then following the shoreline to origin. These coordinates are based on North American Datum 1983 (NAD 83). The Coast Guard will notify the public in advance by way of Ninth Coast Guard District Local Notice to Mariners, Marine Information Broadcasts, and for those who request it from Marine Safety Unit Cleveland, by facsimile.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

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

This determination is based on the size and location of the safety zone within the water. Vessels will not be allowed to transit through the designated safety zone only during the specified times.

Small Entities

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

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

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

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: the proposed zone is only in effect for 6 hours on the days of the event. Before the activation of the safety zone, the Coast Guard will issue maritime advisories available to users who may be impacted through notification in the **Federal Register**, the Ninth District Coast Guard Local Notice to Mariners, Marine Information Broadcasts and when requested by facsimile.

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

Assistance for Small Entities

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

in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Nicole Starr, U.S. Coast Guard Marine Safety Unit Cleveland, 1055 East 9th Street, Cleveland, OH 44114. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T09–004 is added to read as follows:

§ 165.T09–004 Safety Zone; 2006 Headlands State Park, Lake Erie, Painesville Township, Ohio.

(a) *Location.* The Coast Guard will establish a safety zone for the annual Greater Cleveland Area Triathlon. All waters within a line drawn from 41°45′19″ N 081°17′38″ W to 41°45′22″ N 081°17′46″ W then easterly to 41°45′55″ N 081°17′09″ W and thence to 41°45′50″ N 081°17′01″ W then following the shoreline to origin. These coordinates are based on North American Datum 1983 (NAD 83).

(b) *Effective Period.* This section is effective from 6 a.m. (local) through noon (local) on the 12th and the 13th of August, 2006.

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

Dated: February 28, 2006.

S.J. Ferguson,

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

[FR Doc. E6–4098 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–05–016]

RIN 1625–AA00

Safety Zone: Fireworks Display, Morehead City Harbor, Morehead City, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of a 1000 foot safety zone around a fireworks display for the Pepsi Americas' Sail 2006 occurring on July 4, 2006, on the Morehead City Harbor, Morehead City, NC. This action is intended to restrict vessel traffic on the Morehead City Harbor. This safety zone is necessary to protect mariners from the hazards associated with fireworks displays.

DATES: Comments and related material must reach the Coast Guard on or before April 17, 2006.

ADDRESSES: You may mail comments and related material to Commander, Sector North Carolina, 2301 East Fort Macon Road, Atlantic Beach, NC 28512. Sector North Carolina maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Federal Building Fifth Coast Guard District between 9 a.m. and 2 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: CWO Christopher Humphrey, Prevention Department, Sector North Carolina, at (252) 247–4525.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05–05–016, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Sector North Carolina at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On July 4, 2006, the Pepsi Americas' Sail 2006 fireworks display will be held on the Morehead City Harbor in Morehead City, NC. Spectators will be observing from both the shore and from vessels. Due to the need of protection of mariners and spectators from the hazards associated with the fireworks display, vessel traffic will be temporarily restricted.

Discussion of Proposed Rule

The Coast Guard is establishing a safety zone on specified waters of the Morehead City Harbor. The regulated area will consist of a 1000-ft safety zone around a fireworks display from the northern shore of Brandt Island for the Pepsi Americas' Sail 2006, in Morehead City, NC. The safety zone will be enforced from 8:30 p.m. to 10:30 p.m. on July 4, 2006. General navigation in the safety zone will be restricted during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation restricts access to the regulated area, the effect of this rule will not be significant because: (i) The COTP may authorize access to the safety zone; (ii) the safety zone will be in effect for a limited duration; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in that portion of the Morehead City Harbor 8:30 p.m. to 10:30 p.m. on July 4, 2006. The safety zone will not have a significant impact on a substantial number of small entities, because the zone will only be in place for a few hours and maritime advisories will be issued, so the mariners can adjust their plans accordingly. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CWO Christopher Humphrey, Preventing Department, Sector North Carolina, at (252) 247–4525. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add Temporary § 165.T05–016, to read as follows:

§ 165.T05–016 Safety Zone: Morehead City Harbor, Morehead City, NC.

(a) *Location.* The following area is a safety zone: All waters within 1000 feet of the fireworks display at Brandt Island, Morehead City, NC in the Captain of the Port, Sector North Carolina zone as defined in 33 CFR 3.25–20.

(b) *Definition. Captain of the Port:* Means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Sector North Carolina to act on his behalf.

(c) *Regulation.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Sector North Carolina, NC, or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer

on board a vessel displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Sector North Carolina and the Commander at the Prevention Department, Morehead City, North Carolina can be contacted at telephone Number (252) 247–4570 or (252) 247–4520.

(4) The Coast Guard Vessels enforcing the safety zone can be contacted on VHF–FM 13 and 16.

(d) *Effective date.* This regulation is effective from 8 p.m. to 11 p.m. on July 4, 2006.

Dated: March 8, 2006.

William D. Lee,

Captain, U.S. Coast Guard, Captain of the Port, Sector North Carolina.

[FR Doc. E6–4097 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0124; FRL–8040–7]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from the Indiana Department of Environmental Management (IDEM) to revise the Indiana State Implementation Plan (SIP). The revision consists of the repeal of 326 IAC 6–1, and its replacement by new articles 326 IAC 6.5 and 326 IAC 6.8. 326 IAC 6.5 contains particulate matter emission limitations for sources in all counties in Indiana, with the exception of Lake County. Sources in Lake County are addressed in 326 IAC 6.8. The revision does not change any control requirements or any other provisions in 326 IAC 6–1.

In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we do not receive any adverse comments in response to these direct final and proposed rules, we do not contemplate taking any further action in relation to this proposed rule. If EPA receives adverse comments, we will withdraw the direct final rule and will respond to all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before April 21, 2006.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. EPA–R05–OAR–2006–0124 by one of the following methods:

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

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

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

Fax: (312) 886–5824.

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

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

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. EPA–R05–OAR–2006–0124. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I(B) of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Jonathan Nichols at (312) 353–7942 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Jonathan Nichols, Life Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–7942. *Nichols.jonathan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information
A. What Should I Consider as I Prepare My Comments for EPA?
II. What Action Is EPA Taking Today?
III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

I. General Information

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

1. *Submitting CBI.* Do not submit CBI to EPA through RME, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the

comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

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

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

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

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

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

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

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

II. What Action Is EPA Taking Today?

EPA is proposing to approve revisions to the Indiana SIP in one area: To repeal 326 IAC 6–1, and to replace it with 326 IAC 6.5 ''Particulate Matter Limitations for all counties with the exception of Lake County,'' and 326 IAC 6.8 ''Particulate Matter Limitations for Lake County.''

This revision renumbers and simplifies the organizational structure of the rule. IDEM has done this in order to streamline future rule amendment processes by having a separate section for each company. This rule eliminates the submittal of hundreds of pages of paper for one emission limit amendment. The revision does not change any control requirements or any other provisions in 326 IAC 6–1.

III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at RME or in hard copy at the above address. (Please telephone Jonathan Nichols at (312) 353–7942 before visiting the Region 5 Office.)

Dated: February 17, 2006.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 06–2695 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–NV–0002, FRL–8040–9]

Revisions to the Nevada State Implementation Plan, Washoe County District Board of Health

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Washoe County District Board of Health (WCDBH) portion of the Nevada State Implementation Plan (SIP). The WCDBH revisions concern particulate matter (PM–10) emissions from street sanding operations and from street sweeping operations. We are proposing actions on local rules under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by April 21, 2006.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2005–NV–0002, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.
- E-mail: *steckel.andrew@epa.gov.*
- Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: WCDBH Rules 040.031 and 040.032. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this 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.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: February 16, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 06–2696 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R10–OAR–2006–0050; FRL–8041–7]

Approval and Promulgation of Air Quality Implementation Plans; La Grande PM_{10} Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a PM_{10} State Implementation Plan (SIP) maintenance plan revision for the La Grande, Oregon nonattainment area and to redesignate the area from nonattattainment to attainment for PM_{10}. PM_{10} air pollution is suspended particulate matter with a nominal diameter less than or equal to a nominal ten micrometers. EPA is proposing to approve the SIP revision and redesignation request because the State adequately demonstrates that the control measures being implemented in the La Grande area result in maintenance of the PM_{10} National Ambient Air Quality Standards and all other requirements of the Clean Air Act for redesignation to attainment are met.

DATES: Comments must be received on or before April 21, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2006–0050, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Mail: Donna Deneen, Office of Air, Waste and Toxics, AWT–107 EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101.
- Hand Delivery: EPA, Region 10 Mail Room, 9th Floor, 1200 Sixth Ave., Seattle, Washington 98101. Attention: Donna Deneen, Office of Air, Waste and Toxics, OAWT–107. Such deliveries are only accepted during normal hours of operation, and 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: Donna Deneen at telephone number: (206) 553–6706, e-mail address: *deneen.donna@epa.gov,* fax number: (206) 553–0110, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register**. EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA 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 on this action should do so at this time. 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, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: February 24, 2006.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

[FR Doc. 06–2699 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R10–OAR–2006–0010; FRL–8041–8]

Approval and Promulgation of Air Quality Implementation Plans; Lakeview PM_{10} Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a PM_{10} State Implementation Plan (SIP) maintenance plan revision for the Lakeview, Oregon nonattainment area and to redesignate the area from nonattainment to attainment for PM_{10}. PM_{10} air pollution is suspended particulate matter with a nominal diameter less than or equal to a nominal ten micrometers. EPA is proposing to approve the SIP revision and redesignation request because the State adequately demonstrates that the control measures being implemented in the Lakeview area result in maintenance of the PM_{10} National Ambient Air Quality Standards and all other requirements of the Clean Air Act for redesignation to attainment are met.

DATES: Comments must be received on or before April 21, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2006–0010, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Mail: Donna Deneen, Office of Air, Waste and Toxics, AWT–107 EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101.
- Hand Delivery: EPA, Region 10 Mail Room, 9th Floor, 1200 Sixth Ave., Seattle, Washington 98101. Attention: Donna Deneen, Office of Air, Waste and Toxics, OAWT–107. Such deliveries are only accepted during normal hours of operation, and 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: Donna Deneen at telephone number: (206) 553–6706, e-mail address: *deneen.donna@epa.gov*, fax number: (206) 553–0110, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register**. EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA 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 on this action should do so at this time. 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, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: February 24, 2006.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

[FR Doc. 06–2700 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2005–MO–0005; FRL–8048–3]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing four actions in response to Missouri's request to revise the State Implementation Plan (SIP) and Part 70 Operating Permit program to include two new rules and three revised rules. Missouri requested approval of portions of rules adopted on June 26, 2003. Because of the state's request for approval of portions of the rules, EPA is not proposing action on all of the state-adopted rules. All of the rules pertain to Missouri's air permits program. EPA is proposing to approve revisions to Definitions and Common Reference Tables in the SIP and Part 70 Operating Permit program. EPA is proposing to conditionally approve the Construction Permits By Rule. EPA is proposing to approve a SIP revision for changes to the Construction Permits Required rule and to conditionally approve portions of the Construction Permits Required rule, which reference the Construction Permits By Rule. EPA is proposing SIP approval of a new rule, Construction Permit Exemptions.

DATES: Comments must be received on or before April 21, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2005–MO–0005, by one of the following methods:

1. *http://www.regulations.gov:e Follow the on-line instructions for submitting comments.*

2. E-mail: *algoe-eakin.amy@epa.gov.*

3. Mail: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. Hand Delivery or Courier. Deliver your comments to: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2005–MO–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.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 *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 comment. If you send an e-mail comment directly to EPA without going through *http://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.

Docket. All documents in the electronic 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 Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551–7942 or by e-mail at *algoe-eakin.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval or disapproval of a state regulation mean to me?
What is the Part 70 operating permits program?
What is the Federal approval process for an operating permits program?
What is being addressed in this document?
Have the requirements for approval of a SIP revision and a Part 70 revision been met?
What action is EPA proposing?

What is a SIP?

Section 110 of the Clean Air Act (CAA or Act) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards (NAAQS) established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What is the Federal approval process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What does Federal approval or disapproval of a state regulation mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA. If a state regulation is disapproved, it is not incorporated into the Federally-approved SIP and is not enforceable by EPA or by citizens under section 304. In the case of a revision to a Federally-approved state regulation, disapproval of the revision means that the underlying state regulation prior to the state's revision remains as the Federally enforceable requirement.

What is the part 70 operating permits program?

The CAA amendments of 1990 require all states to develop operating permits programs that meet certain federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' source of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all source regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide or PM10 ; those that emit 10 per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies operating permits program are also subject to public notice, comment and our approval.

What is the Federal approval process for an operating permits program?

In order for state regulations to be incorporated into the Federally enforceable Part 70 operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, pubic comment period, and formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the approved operating permits program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA are incorporated into the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled, ''Approval Status of State and Local Operating Permits Programs.''

What is being addressed in this document?

On July 14, 2004, Missouri requested that EPA revise the SIP to include two new rules and three revised rules and revise the Part 70 program to include revisions to two rules. All of these rules pertain to Missouri's air permit program and will assist in effective management of Missouri's air permitting program and provide clarity to several confusing elements of the program. These rules were adopted by the Missouri Air Conservation Commission on June 26, 2003, and became effective under state law on October 30, 2003. When Missouri submitted these rules to EPA, Missouri included the comments made on the rules during the state's adoption process, the state's response to comments, and other information necessary to meet EPA's completeness criteria. For additional information on the completeness criteria, the reader should refer to 40 CFR part 51, appendix V.

EPA is proposing four actions in response to this request.

The first action we are proposing is to approve the Missouri Department of Natural Resources' (MDNR) request to include, as a revision to Missouri's SIP and Part 70 Operating Permit program, amendments to rule 10 CSR 10–6.020, Definitions and Common Reference Tables. This proposed approval would incorporate changes in definitions of ''cold cleaner,'' ''nonattainment area,'' ''opacity,'' ''portable equipment installation,'' ''significant,'' and ''visible emissions.'' These changes are minor and are consistent with EPA requirements.

The second action we are proposing is to approve and conditionally approve revisions to the Construction Permits Required rule, 10 CSR 10–6.060. These changes clarify and correct rule applicability sections for consistency with Federal regulations. The parts of rule 10 CSR 10–6.060 that are proposed for conditional approval are the references to 10 CSR 10–6.062, Construction Permits By Rule, which is being proposed for conditional approval in its entirety, as discussed later in this proposal.

The third action we are proposing is to approve certain sections of a new Missouri rule, Construction Permit Exemptions, 10 CSR 10–6.061. This rule lists specific categories of construction or modification projects which are not required to obtain permits to construct under the Construction Permits Required rule, 10 CSR 10–6.060. Many of the exemptions previously listed in the Construction Permits Required rule had been previously approved by EPA. For those exemptions which were not previously listed in the Construction Permit Required rule or were not intuitively *de minimis*, EPA Region 7 requested a demonstration that these exemptions do not impact attainment or maintenance of the National Ambient Air Quality Standards (NAAQS). Missouri submitted this demonstration with the June 14, 2004, SIP submittal. EPA believes that this demonstration satisfactorily illustrates that the construction permit exemptions proposed for approval in this action will not interfere with attainment of the NAAQS.

However, one exemption included in the June 2003 state rulemaking is not included in today's proposal. In an October 25, 2005, request from the Director of Missouri's Air Pollution

Control Program to the EPA Region 7 Regional Administrator, Missouri withdrew subparagraph (3)(A)2.D, of 10 CSR 10–6.061 from the SIP submission. This exemption is for ''Livestock markets and livestock operations'' constructed on or before November 30, 2003. EPA proposes to approve the exemptions in 10 CSR 10–6.061, which do not include the livestock exemption found in subparagraph (3)(A)2.D per Missouri's request. EPA also proposes to approve the renumbering of the exemptions previously approved into the SIP, which Missouri has moved from 10 CSR 10–6.060 to 10 CSR 10–6.061. This latter proposal involves an administrative change and does not substantively reopen EPA's approval of the exemptions previously contained in 10 CSR 10–6.060.

The fourth action we are proposing is to conditionally approve the Construction Permits By Rule, 10 CSR 10–6.062. This is a new rule that creates a process by which sources can be exempted from the Construction Permits Required rule, because the rule establishes conditions under which specific sources can construct and operate. It also establishes notification requirements and standard review fees. The rule authorizes sources to construct and operate upon submission of notice to MDNR.

We are proposing conditional approval of rule 10 CSR 10.6–062. This proposed conditional approval does not include paragraph (3)(B)4., which is a permit by rule for livestock operations. In an October 25, 2005, request from the Director of MDNR's Air Pollution Control Program to EPA Region 7 Regional Administrator, Missouri withdrew the paragraph for EPA approval. EPA anticipates that Missouri will revise and submit new rules relating to livestock operations in the near future.

EPA proposes a conditional approval because this rule, as adopted by the Missouri Air Conservation Commission on June 26, 2003, does not expressly include a mechanism for pre-construction review of applications received from the facilities that want to operate under this rule. Section 110(a)(2)(C) of the CAA requires that each SIP include a program to regulate construction and modification of sources to ensure that the NAAQS are achieved. EPA's implementing regulation provides that the plan must include procedures, ''by which the state * * * will prevent such construction or modification'' where the source or modification would violate a control strategy or interfere with attainment or maintenance of the NAAQS (see 40 CFR 51.160(b)). Because Missouri's Construction Permits By Rule appears to authorize construction to begin before any air quality review occurs, and the rule only provides for revocation of a permit after the source begins construction or operation, EPA believes that Missouri's preconstruction permit program is deficient with respect to sources which may qualify for the Permit By Rule. With respect to these sources, the rule does not clearly authorize Missouri to prevent construction or modification before construction or modification begins.

In order to rectify these deficiencies, the Missouri Air Conservation Commission (MACC) adopted a resolution on December 8, 2005, which is intended to clarify that Missouri, in administering this rule, will require a preconstruction review period before sources may begin construction and will amend the Construction Permits by Rule to expressly include a preconstruction review period. The MACC also directed the Missouri Department of Natural Resources' Air Pollution Control Program to complete revisions to this rule within twelve months of the December 2005 resolution. During the interim period required to promulgate an effective rule, the program is directed to conduct a maximum seven day review period procedure for permit by rule notifications submitted in accordance with Missouri rule 10 CSR 10–6.062, Construction Permits by Rule.

Because the MACC resolution serves to clarify the preconstruction review, which is an issue of significant concern to EPA, we propose to conditionally approve into the SIP Missouri rule 10 CSR 10–6.062, Construction Permits by Rule. Section 110(k)(4) of the Clean Air Act states that EPA may conditionally approve a plan based on a commitment from the state to adopt specific enforceable measures within one year from the date of approval. If the state fails to meet its commitment within the one-year period, the approval is treated as a disapproval. As such, this rule is proposed for approval with the condition that Missouri must revise the Construction Permits By Rule to incorporate a preconstruction review period and submit this revised rule for inclusion into the SIP to EPA within one year of the date EPA finalizes this action.

Finally, Missouri's submittal includes revisions to Missouri's Operating Permits Rule in 10 CSR 10–6.065. These revisions relate to Missouri's operating permit program for minor sources which are not subject to the state's Title V program for major sources (and other specified source categories) and are not seeking limits to avoid any major source requirements. The rule revisions for rule 10 CSR 10–6.065 relate solely to the state's basic operating permit program that are not included in Missouri's approved Part 70 Operating Permits program or SIP. Therefore, we are not acting on these revisions.

Have the requirements for approval of a SIP revision and a Part 70 revision been met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the Technical Support Document (TSD) that is part of this rule, except as noted with respect to the permits by rule provision discussed above, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. Finally, the submittal met the substantive requirements of Part 70 of the 1990 CAA Amendments and 40 CFR part 70.

What action is EPA proposing?

EPA is proposing four actions:

(1) EPA is proposing to approve, as an amendment to the Missouri SIP and Part 70 program, revisions to Definitions and Common Reference Tables, Missouri Rule 10 CSR 10–6.020.

(2) EPA is proposing to approve, as an amendment to the Missouri SIP, revisions to the Construction Permits Required, Missouri Rule 10 CSR 10.060. We are proposing to conditionally approve portions of the Construction Permits Required rule, which reference the Construction Permits by Rule, 10 CSR 10–6.062.

(3) EPA is proposing approval into the SIP of a new rule, Construction Permit Exemptions, 10 CSR 10–6.061, except for the livestock markets and livestock operations exemption found in this rule, which was withdrawn in an October 25, 2005, request from the state of Missouri.

(4) EPA is proposing to conditionally approve, as an amendment to the Missouri SIP, the Construction Permits By Rule, 10 CSR 10–6.062, except for the livestock markets and livestock operations exemption found in this rule, which was withdrawn in an October 25, 2005, request from the state of Missouri.

We are soliciting comments on these proposed actions. Final rulemaking will occur after consideration of any comments.

Statutory and Executive Order Reviews

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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this 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 (Pub. L. 104–4).

This proposed 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 proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed 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 state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. 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 proposed 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.*).

List of Subjects

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.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: March 13, 2006.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. E6–4146 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–8048–2]

Indiana; Tentative Approval of State Underground Storage Tank Program

ACTION: Proposed rule; notice of tentative determination on application of State of Indiana for final approval, public hearing and public comment period.

SUMMARY: The State of Indiana has applied for approval of the underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Indiana application and has made the tentative decision that Indiana's underground storage tank program satisfies all of the requirements necessary to qualify for approval. The Indiana application for approval is available for public review and comment. A public hearing will be held if sufficient public interest is expressed.

DATES: A public hearing will be held if sufficient public interest is expressed and communicated to EPA in writing by April 11, 2006. EPA will determine by April 21, 2006, whether there is significant interest to hold the public hearing. The State of Indiana will participate in any public hearing held by EPA on this subject. Written comments on the Indiana approval application, as well as requests to present oral testimony, must be received by the close of business on April 11, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–UST–2006–0188. All documents in the docket are listed on the *http://www.regulations.gov* Web site. 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 not placed on the Internet and will be publicly available only in hard form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy as follows. You can view and copy Indiana's approval application at the following addresses:

Indiana Department of Environmental Management, File Room located on the 12th floor of the Indiana Government Center—North, 100 North Senate Avenue 46204, Telephone: (317) 234–0963, Monday through Friday, 8:30 a.m. through 4:30 p.m.; and

U.S. EPA Region 5, Underground Storage Tank Section, 77 West Jackson Blvd., Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend you telephone Sandra Siler, Enforcement Officer, at (312) 886–0429 before visiting the Region 5 office.

Submit written comments, identified by Docket ID No. EPA–R05–UST–2006–0188, by one of the following methods: *http://www.regulations.gov:* Follow the online instructions for submitting comments.

E-mail: *tschampa.andrew@epa.gov.*

Fax: (312) 353–3159.

Mail: Mr. Andrew Tschampa, Chief of Underground Storage Tank Section, U.S. EPA Region 5, DU–7J, 77 West Jackson Blvd., Chicago, Illinois 60604.

Hand Delivery: Andrew Tschampa, Chief of Underground Storage Tank Section, U.S. EPA, DU–7J, 77 W. Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special

arrangements should be made for deliveries of boxed information. The Regional Office Official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–UST–2006–0188. 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://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 *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 comment. If you send an e-mail comment directly to EPA without going through *http://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.*

Unless sufficient public interest is expressed, EPA will not hold a public hearing on the State of Indiana's application for program approval. Anyone who wishes to learn whether or not a public hearing on the State's application has been scheduled should telephone the following contacts after April 21, 2006:

Mr. Andrew Tschampa, Chief, Underground Storage Tank Section, U.S. EPA Region 5, DU–7J, 77 West Jackson Blvd., Chicago, Illinois 60604, Telephone: (312) 886–6136, or

Mr. Skip Powers, Chief, Underground Storage Tank Section, Indiana Department of Environmental Management, 100 N. Senate Avenue, Indianapolis, Indiana 46206, Telephone: (317) 308–3039.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Tschampa, Chief, Underground Storage Tank Section, U.S. EPA Region 5, DU–7J, 77 West Jackson Blvd., Chicago, Illinois, Telephone: (312) 886–6136.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the State program: Is ''no less stringent'' than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (on information-gathering) and 9006 (on Federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State authorized analogues to these provisions.

II. Indiana

The Indiana Department of Environmental Management (IDEM) is the implementing agency for underground storage tank (UST) activities in the State.

IDEM UST/LUST program was first implemented in 1986 and IDEM recently amended its technical rules, which came into effect October 2004. Indiana adopted UST program regulations for petroleum and hazardous substance underground storage tanks. Prior to the adoption of the regulations, Indiana solicited public comments on the draft UST program regulations.

IDEM submitted their application for State Program Approval (SPA) of Indiana's UST program to U.S. EPA by letter dated April 5, 2005. EPA reviewed IDEM's application and determined it to be complete. EPA notified IDEM in a June 22, 2005, letter that the Indiana application was complete. In addition, EPA has reviewed the IDEM application and has tentatively determined that the State's UST program meets all of the requirements necessary to qualify for final approval.

EPA will not hold a public hearing on its tentative decision, unless sufficient public interest is expressed. The public may also submit written comments on EPA's tentative determination until April 11, 2006. Copies of the Indiana application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

EPA will consider all public comments on its tentative determination received at a public hearing if scheduled, or received in writing during the public comment period. Issues raised by those comments may be the basis for a decision to deny final approval to Indiana. EPA expects to make a final decision on whether or not to approve Indiana's program within 60 days of the close of the public comment period, and will give notice of it in the **Federal Register**. The document will include a summary of the reasons for the final determination and a response to all significant and pertinent comments.

Included in the State's Application is an Attorney General's statement. In some instances, the State program may be broader in scope or more stringent than the Federal program. The Attorney General's statement provides an outline of the State's statutory and regulatory authority and details concerning areas where the State program is broader in scope or more stringent than the Federal program.

III. Statutory and Executive Order Reviews

This rule only applies to the Indiana Department of Environmental Management's underground storage tank program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law (see **SUPPLEMENTARY INFORMATION**). Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. *Executive Order 12866: Regulatory Planning Review*—The Office of Management and Budget has exempted this rule from its review under Executive Order (EO) 12866.

2. *Paperwork Reduction Act*—This rule does not impose an information collection burden under the Paperwork Reduction Act.

3. *Regulatory Flexibility Act*—After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. *Unfunded Mandates Reform Act*—Because this rule codifies 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.

5. *Executive Order 13132: Federalism*—EO 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, 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).

6. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—EO 13175 does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects 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).

7. *Executive Order 13045: Protection of Children from Environmental Health & Safety Risks*—This rule is not subject to EO 13045 because it is not economically significant and it is not based on health or safety risks.

8. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This rule is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866.

9. *National Technology Transfer and Advancement Act*—Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of Sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: March 9, 2006.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E6–4145 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–516; MB Docket No. 06–50; RM–11316]

Radio Broadcasting Services; Carrizo Springs, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Jeraldine Anderson d/b/a Carrizo Springs Broadcasting requesting the allotment of Channel 295A at Carrizo Springs, Texas. The coordinates for Channel 295A at Carrizo Springs, Texas, are 28–27–00 NL and 99–50–30 WL. There is a site restriction 8.1 kilometers (5.1 miles) south of the community.

DATES: Comments must be filed on or before April 24, 2006, and reply comments on or before May 9, 2006.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Jeraldine Anderson, d/b/a Carrizo Springs Broadcasting, 1702 Cypress Drive, Irving, Texas 75061.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 06–50, adopted March 1, 2006, and released March 3, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 295A at Carrizo Springs, Texas.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–2607 Filed 3–21–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 13

[FAR Case 2005–029; Docket 2006–0020]

RIN 9000–AK46

Federal Acquisition Regulation; FAR Case 2005–029, Termination or Cancellation of Purchase Orders

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to correct the inadvertent omission of appropriate references in the FAR pertaining to termination for cause of those purchase orders that have been accepted in writing. The Government is soliciting comments from interested parties to ensure the language in this proposed rule is clear in stating the appropriate termination coverage for commercial purchase orders that have been accepted in writing by the contractor.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before May 22, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2005–029 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.2005–029@gsa.gov*. Include FAR case 2005–029 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 FAR case 2005–029 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 O. Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAR case 2005–029 for information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to amend FAR 13.302–4 by reinstating the appropriate coverage for termination for cause of commercial purchase orders.

For commercial purchase orders that have been accepted in writing by the contractor, current references to FAR 12.403(d) and FAR 52.212–4(l) as stated in 13.302–4(a) address termination for convenience. The current FAR language at 13.302–4(a) was established in February 1998 under Federal Acquisition Circular 97–3. This change constituted a complete rewrite/reorganization of FAR Part 13. Previously, FAR Part 13 identified both termination for cause as well as for convenience as the termination methods available to contracting officers. Furthermore, FAR 12.403 permits the Government to terminate a contract for commercial items either for the convenience of the Government or for cause, and makes no distinction based on the dollar value of the commercial item contract, nor the contractual method utilized to procure the commercial item. Therefore, the proposed changes at FAR 13.302–4(a) reinstitute references to procedures for termination for cause as well as termination for convenience.

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 Councils do not expect this proposed rule to 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 change the Government's existing termination rights but merely clarifies those rights by correcting an inadvertent error in the FAR. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 13 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.* (FAR case 2005–029), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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 13

Government procurement.

Dated: March 15, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 13 as set forth below:

PART 13—SIMPLIFIED ACQUISITION METHODS

1. The authority citation for 48 CFR part 13 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 13.302–4 by:

a. Revising paragraph (a)(1); and

b. Revising paragraph (b)(2) to read as follows:

13.302–4 Termination or cancellation of purchase orders.

(a) * * *

(1) 12.403 and 52.212–4(l) or (m) for commercial items; or

* * * * *

(b) * * *

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the action as a termination prescribed in paragraph (a) of this subsection.

[FR Doc. 06–2756 Filed 3–21–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AT82

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes regulations that would authorize the nonlethal, incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry (Industry) exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska. Industry operations for the covered period are similar to, and include all activities covered by the previous 16-month Beaufort Sea incidental take regulations that were effective from November 28, 2003, through March 28, 2005 (68 FR 66744; November 28, 2003). We are proposing that this rule be effective for 5 years from date of issuance.

We propose a finding that the total expected takings of polar bear and Pacific walrus during oil and gas industry exploration, development, and production activities will have a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for subsistence use by Alaska Natives. We base this finding on the results of 12 years of data on the encounters and interactions between polar bears, Pacific walrus, and Industry; recent studies of potential effects of Industry on these species; and oil spill risk assessments using oil spill trajectory models, polar bear density models, potential and documented Industry impacts on these species, and models to determine the likelihood of impacts to polar bears should an accidental oil release occur. We are seeking public comments on this proposed rule.

DATES: Comments on this proposed rule must be received by April 21, 2006.

ADDRESSES: You may submit comments, identified by RIN 1018–AT82, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *FW7MMM@fws.gov*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AT82'' in the subject line and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at U.S. Fish and Wildlife Service, Office of Marine Mammals Management, 907–786–3810 or 1–800–362–5148.
- Fax: 907–786–3816.
- Mail: Craig Perham, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.
- Hand Delivery/Courier: Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Craig Perham, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, Telephone 907–786–3810 or 1–800–362–5148, or Internet *craig_perham@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(A)) gives the Secretary of the Interior (Secretary) through the Director of the Service (we) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (you) [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographic region. According to the MMPA, we shall allow this incidental taking if (1) we make a finding that the total of such taking for the 5-year regulatory period will have no more than a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for taking for subsistence use by Alaska Natives, and (2) we issue regulations that set forth (a) permissible methods of taking, (b) means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses, and (c) requirements for monitoring and reporting. If regulations allowing such incidental taking are issued, we can issue Letters of Authorization (LOA) to conduct activities under the provisions of these regulations when requested by citizens of the United States.

The term ''take,'' as defined by the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment, as defined by the MMPA, means ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild'' (the MMPA calls this Level A harassment); ''or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering'' (the MMPA calls this Level B harassment).

The terms ''small numbers,'' ''negligible impact,'' and ''unmitigable adverse impact'' are defined in 50 CFR 18.27 (*i.e.*, regulations governing small takes of marine mammals incidental to specified activities) as follows. ''Small numbers'' is defined as ''a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.'' ''Negligible impact'' is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' ''Unmitigable adverse impact'' means ''an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.''

Industry conducts activities such as oil and gas exploration, development, and production in marine mammal habitat that may result in the taking of marine mammals. Although Industry is under no legal requirement to obtain incidental take authorization, since 1993, Industry has requested, and we have issued a series of regulations for incidental take authorization for conducting activities in areas of polar bear and walrus habitat. Since the inception of these incidental take regulations, polar bear/walrus monitoring observations associated with the regulations have recorded over 700 polar bear observations associated with Industry activities. The large majority of reported encounters have been passive observations of bears moving through the oil fields. Monitoring of Industry activities indicates that encounters with walrus are insignificant with only nine

walrus observations during the same period.

A detailed history of our past regulations can be found in our most recent regulation, published on November 28, 2003 (68 FR 66744). In summary, these past regulations were published on: November 16, 1993 (58 FR 60402); August 17, 1995 (60 FR 42805); January 28, 1999 (64 FR 4328); February 3, 2000 (65 FR 5275); March 30, 2000 (65 FR 16828); and November 28, 2003 (68 FR 66744).

The most recent regulations were issued in response to a request submitted by the Alaska Oil and Gas Association (AOGA) on August 23, 2002. AOGA, on behalf of its members, requested that we promulgate regulations for nonlethal incidental take of small numbers of Pacific walrus and polar bears for a period of 5 years, originally projected to be from March 31, 2003, through March 31, 2008. To ensure that we had adequate time to thoroughly assess effects of Industry activities over the requested 5-year period, and to minimize disruptions related to a lapse in the regulations, we published a 16-month rule (68 FR 66744), on November 28, 2003, that expired on March 28, 2005. A lapse in authorization occurred from March 31, 2003, to November 28, 2003, during which industry was liable for take of any polar bear and walrus.

From 1993 to 2004, under this series of regulations, 262 LOAs were issued for oil and gas related activities. Activities covered by LOAs included: exploratory operations, such as seismic surveys and drilling; development activities, such as construction and remediation; and production activities for operational fields. During this time period, 78 percent of LOAs issued were for exploratory activities, 12 percent for development, and 10 percent for production activities. Twenty one percent (55/262) of these activities actually observed a total of 726 polar bear sightings, and approximately 41 percent of these sightings occurred during production activities. In addition, seven activities observed walrus during the same time period.

Summary of Current Request

These proposed regulations respond to the AOGA request of August 23, 2002, and to an August 2004 addendum to that request. These proposed regulations also respond to a July 2004 request from BP Exploration (Alaska), Inc. (BPXA) for regulations to cover only their operations. The BPXA request is encompassed by the scope of the AOGA request. The combined requests are for regulations to allow the incidental nonlethal take of a small number of polar bear and Pacific walrus in association with oil and gas activities on the North Slope of Alaska. Industry has specifically requested that these regulations be issued for nonlethal take. Industry has indicated that, through implementation of the mitigation measures, it is confident a lethal take will not occur. The requests encompass the entire North Slope-wide oil and gas activities projected out to 2010.

AOGA's application indicates that they request regulations that will be applicable to any company conducting oil and gas exploration activities as described within the request. Members of AOGA include: Alyeska Pipeline Service Company; Marathon Oil Company; Anadarko Petroleum Corporation Petro Star, Inc.; BP Exploration (Alaska), Inc.; Phillips Alaska, Inc.; ChevronTexaco Corporation; Shell Western E&P, Inc.; Cook Inlet Pipe Line Company; Tesoro Alaska Company; Cook Inlet Region, Inc.; TotalFinaElf E&P USA; EnCana Oil & Gas (USA), Inc.; UNOCAL; Evergreen Resources, Inc.; Williams Alaska Petroleum, Inc.; ExxonMobil Production Company; XTO Energy, Inc.; and Forest Oil Corporation. The activities and geographic region specified in AOGA's request, and considered in these regulations, are described in the ensuing sections titled ''Description of Geographic Region'' and ''Description of Activities.''

Prior to issuing regulations at 50 CFR part 18, subpart J in response to this request, we must evaluate the level of industrial activities, their associated potential impacts to polar bears and Pacific walrus, and their effects on the availability of these species for subsistence use. The recent petition and discussions with Industry regarding the petition addendum indicate that industrial activities during the 5-year period will be similar to the level of activities covered in the previous 16-month regulation; however, the area of activity is expanding into the National Petroleum Reserve–Alaska (NPR–A).

Description of Proposed Regulations

The regulations that we are proposing include: Permissible methods of nonlethal taking; measures to ensure the least practicable adverse impact on the species and the availability of these species for subsistence uses; and requirements for monitoring and reporting. The geographic region and the type of industrial activities, as outlined in the ''Description of Activities'' section and assessed in these proposed regulations and which will be issued for a duration of 5 years, are similar to those in the regulations we issued on November 28, 2003.

These proposed regulations would not authorize the actual activities associated with oil and gas exploration, development, and production. Rather, they would authorize the nonlethal incidental, unintentional take of small numbers of polar bears and Pacific walrus associated with those activities. The Minerals Management Service (MMS), the U.S. Army Corps of Engineers, and the Bureau of Land Management are responsible for permitting activities associated with oil and gas activities in Federal waters and on Federal lands. The State of Alaska is responsible for permitting activities on State lands and in State waters.

If we issue final nonlethal incidental take regulations, persons seeking taking authorization for particular projects will apply for an LOA to cover nonlethal take associated with exploration, development, or production activities pursuant to the regulations. Each group or individual conducting an oil and gas industry-related activity within the area covered by these regulations may request an LOA. Applicants for LOAs must submit a plan to monitor the effects of authorized activities on polar bears and walrus. Applicants for LOAs must also include a Plan of Cooperation describing the availability of these species for subsistence use by Alaska Native communities and how they may be affected by Industry operations. The purpose of the Plan is to ensure that oil and gas activities will not have an unmitigable adverse impact on the availability of the species or the stock for subsistence uses. The Plan must provide the procedures on how Industry will work with the affected Native communities, including a description of the necessary actions that will be taken to: (1) Avoid or minimize interference with subsistence hunting of polar bears and Pacific walrus; and (2) ensure continued availability of the species for subsistence use. The Plan of Cooperation is further described in ''Effects of Oil and Gas Industry Activities on Subsistence Uses of Marine Mammals.''

We will evaluate each request for an LOA for a specific activity and specific location, and may condition the LOA depending on specific circumstances for that activity and location. For example, an LOA issued in response to a request to conduct activities in areas with known, active bear dens or a history of polar bear denning, may be conditioned to require one or more of the following: Forward Looking Infrared (FLIR) imagery flights to determine the location of active polar bear dens; avoiding all

denning activity by one mile; intensified monitoring in a 1-mile buffer around the den; or avoiding the area during the denning period. More information on applying for and receiving an LOA can be found at 50 CFR 18.27(f).

Description of Geographic Region

These proposed regulations would allow Industry to incidentally take small numbers of polar bear and Pacific walrus within the same area, referred to as the Beaufort Sea Region, as covered by our previous regulations. This region is defined by a north–south line through Point Barrow, Alaska, and includes all Alaska coastal areas, State waters, and all Outer Continental Shelf (OCS) waters east of that line to the Canadian border. The onshore region is the same north–south line at Point Barrow, 25 miles inland, and extending east to the Canning River. The Arctic National Wildlife Refuge is not included in the area covered by these regulations.

Description of Activities

Activities covered in these proposed regulations include Industry exploration, development, and production operations of oil and gas reserves, as well as environmental monitoring associated with these activities, on the northern coast of Alaska. We will evaluate these and any future activities to insure that they fall within the scope of activities analyzed in these regulations on a case-by-case basis through the LOA process. Listed below are Industry-identified activities to be covered under the proposed regulations.

Alaska's North Slope encompasses an area of 88,280 square miles and currently contains 11 oil and gas field units associated with Industry. These include the Greater Prudhoe Bay, Duck Island, Badami, Northstar, Kuparuk River, Colville River, Oooguruk, Tuvaq, Nikaitchuq, Milne Point, and Point Thomson. These units can encompass exploration, development, and production activities. In addition, some of these fields include associated satellite oilfields: Sag Delta North, Eider, North Prudhoe Bay, Lisburne, Niakuk, Niakuk-Ivashak, Aurora, Midnight Sun, Borealis, West Beach, Polaris, Orion, Tarn, Tabasco, Palm, West Sak, Meltwater, Cascade, Schrader Bluff, Sag River, and Alpine. Additional proposed satellite prospects identified within or near existing oil and gas field units, such as Pioneer Natural Resource's Gwydyr Bay leases and Kerr McGee's Two Bits Prospect are also analyzed in this rule.

Exploration Activities

Exploration activities may occur onshore or offshore and include: Geological surveys; geotechnical site investigations; reflective seismic exploration; vibrator seismic data collection; airgun and water gun seismic data collection; explosive seismic data collection; vertical seismic profiles; sub-sea sediment sampling; construction and use of drilling structures such as caisson-retained islands, ice islands, bottom-founded structures [steel drilling caisson (SDC)], ice pads and ice roads; oil spill prevention, response, and cleanup; and site restoration and remediation. Exploration activities could also include the development of staging facilities. The level of exploration activities is expected to be similar to the level during the past regulatory periods, although exploration projects may shift to different locations, particularly NPR–A.

The location of new exploration activities within the geographic region of the proposed rule will, in part, be determined by the following State and Federal oil and gas lease sales:

State of Alaska Lease Sales

The State of Alaska practices areawide leasing in which the State annually offers all available State acreage not currently under lease within areas that are already subjected to leasing. North Slope Areawide Lease Sales are held annually in October. Five lease sales have been held to date. As of July 2004, there are 777 active leases in this area, encompassing 2.4 million acres. Beaufort Sea Areawide Lease Sales are held annually in October. Four lease sales have been held to date. As of July 2004, there are 194 active leases in this area, encompassing 440,000 acres. Future State of Alaska lease sales will continue.

Northeast Planning Area of NPR–A

Two lease sales have been held in the Northeast Planning Area of NPR–A. The 1999 lease sale resulted in the sale of 133 tracts, and the 2002 sale resulted in the sale of 60 tracts. Acreage awarded under these two lease sales totals 1.4 million acres. Thirteen exploratory wells have been drilled to date. In June 2004, the Bureau of Land Management (BLM) issued a Draft Environmental Impact Statement (DEIS) for the northeast planning area, proposing to expand the acreage available for leasing within this area. A Final EIS was published in January 2005 and in January 2006, BLM approved a new plan that amended the 1998 Record of Decision and expanded the lease areas around Teshekpuk Lake. Lease sales will occur at 2- and 3-year intervals. Production from new leases issued from these sales is not projected to occur during the regulatory period.

OCS Lease Sales

In February 2003, the MMS issued the FEIS for three lease sales planned for the Beaufort Sea Planning Area in the OCS. Sale 186 was held in September 2003, resulting in the leasing of 34 tracts. Sale 195 was held in March 2005. Sale 202 is scheduled for March 2007. While the disposition of the leases purchased is highly speculative at this time, it is probable that at least some seismic exploration and possibly some exploratory drilling could take place during the 5-year period of the proposed regulations.

Exploratory drilling for oil is an aspect of exploration activities. Exploratory drilling and associated support activities and features include: Transportation to site; setup of up to 100 person camps and support camps (lights, generators, snow removal, water plants, wastewater plants, dining halls, sleeping quarters, mechanical shops, fuel storage, camp moves, landing strips, aircraft support, health and safety facilities, data recording facility and communication equipment); building gravel pads; building gravel islands with sandbag and concrete block protection; ice islands; ice roads; gravel hauling; gravel mine sites; road building; pipelines; electrical lines; water lines; road maintenance; buildings and facilities; operating heavy equipment; digging trenches; burying and covering pipelines; sea lift; water flood; security operations; dredging; moving floating drill units; helicopter support; and drill ships such as the SDC, CANMAR Explorer III, and the Kulluk.

During the regulatory period, exploration activities are anticipated to continue in the current oil field units, including those projects identified by Industry below.

Oooguruk Unit

The Oooguruk Unit is located adjacent to and immediately northwest of the Kuparuk River Unit in shallow waters of the Beaufort Sea, near Thetis Island. The unit operator, Pioneer Natural Resources, is currently conducting a feasibility study for the potential development of reservoirs encountered in previous exploration drilling. Pioneer may conclude the study and move forward with development and, ultimately, production activities during the regulatory period if results from the feasibility study prove favorable.

Facilities would include an offshore production island between Thetis Island and the Colville River Delta, a 5.7 mile underground pipeline, where landfall will occur near the mouth of the Kalubik Creek.

Nikaitchuq Unit

The Nikaitchuq Unit is located near Spy Island, north of Oliktok Point and the Kuparuk River Unit, and northwest of the Milne Point Unit. Operator Kerr-McGee Oil and Gas Corporation drilled three exploratory wells on and immediately adjacent to Spy Island, 4 miles north of Oliktok Point in the ice-covered season of 2004–2005. Kerr-McGee is moving to develop this site as a future production area. Facilities will include 3 offshore production islands south of the Jones Island group and approximately 13 miles of underground pipeline connecting the sites to a mainland landfall near Oliktok Point.

Two Bits Prospect

Armstrong Oil and Gas filed a plan of operation with the State of Alaska to drill one to three onshore exploratory wells west of the Kuparuk River unit in 2005. Operations at the ''Two Bits'' prospect will occur either from an existing gravel pad (West Sak 18) or from an ice pad constructed immediately adjacent to that pad. Kerr-McGee Oil and Gas Corporation is currently the operating company for this project.

Exploration activities will also occur beyond the current oil field units, including the Industry projects below.

Nearshore Stratigraphic Test Well, Eastern Beaufort Sea

The State of Alaska plans to drill a stratigraphic test well at one of two potential locations in State waters offshore of the 1002 area of the Arctic National Wildlife Refuge. One location is approximately 20 miles southwest of Kaktovik near Anderson Point; the second is approximately 30 miles southeast of Kaktovik near Angun Point. The locations are in water depths of 25–30 feet (ft), and drilling operations will be conducted in winter utilizing the SDC, a mobile offshore drilling unit. The test well drilling was originally planned to take place during the 2004–2005 drilling season; however, a decision to move forward has not yet been made.

Shell Exploration and Production Company's Beaufort Sea Program

Shell Exploration and Production Company is planning an open water seismic program, which will consist of an estimated 3,000 miles of 3D seismic line acquisition and site clearance surveys in the eastern Beaufort Sea. The open water seismic program will consist of two vessels, one active in seismic acquisition and the second providing logistical support. The open water program will involve a geotechnical investigation supported by a soil-boring vessel. The offshore open water seismic program is proposed to occur between August and October 2006, depending on ice and whaling activities.

An onshore/on-ice geotechnical program will acquire soil borings from approximately 200 ft onshore seaward to 10 kilometers (km) offshore. The work will be conducted on offshore ice over waters approximately 10 to 15 meters in depth. Shell will drill approximately 60 borings ranging from 35 to 75 ft in depth. Thermister strings will be placed in 2 or 3 borings and recovered a month later. The onshore/on-ice geotechnical program activities are proposed to occur between March and May 2006.

Cape Simpson Support Program; Ukpeagvik Inupiat Corporation (UIC)

UIC has entered into lease agreements with the North Slope Borough to operate North Slope facilities between Prudhoe Bay and Barrow in support of oil and gas exploration activities. UIC is developing a staging area at Cape Simpson, between Smith Bay and Dease Inlet, on the Beaufort Sea coast. The following activities are likely to occur during their operations on the North Slope: Marine Transportation and Barging, Fixed and Temporary Camp Operations, Equipment and Materials Staging and Storage, Flight Operations, Ice Road Construction, and Exploration Site Support.

Development Activities

Development activities associated with oil and gas industry operations include: Road construction; pipeline construction; waterline construction; gravel pad construction; camp construction (personnel, dining, lodging, maintenance shops, water plants, wastewater plants); transportation (automobile, airplane, and helicopter traffic); runway construction; installation of electronic equipment; well drilling; drill rig transport; personnel support; and demobilization, restoration, and remediation.

In the recent petition, the Alpine West Development has been identified as an Industry development activity. The development and construction of five Alpine satellite drill sites (identified as CD–3 through CD–7), gravel roads, an airstrip, and pipelines is currently in its first year of construction (2005). Two of the drill sites, CD–3 (also known as Fiord prospect or CD–North), and CD–4, (also known as the Nanuq prospect or CD–South), are in the Colville River Delta. The CD–3 drillsite is located north of CD–1 (Alpine facility) and is proposed to be a roadless development. The remaining drill sites are proposed to be connected to CD–1 by road. Three of the drill sites, CD–5 (also known as Alpine West prospect), CD–6 (Lookout prospect) and CD–7 (Spark prospect), are in the National Petroleum Reserve–Alaska (NPR–A). Construction of CD–3 and CD–4 drill sites began in winter 2004/2005, with production startup for both drill sites in late summer 2006. The three NPR–A drill sites are scheduled for construction from the winter 2007 through winter 2010. All drill sites are scheduled to be in production by summer 2010.

Liberty

BPXA is planning to develop the Liberty oil field in the Beaufort Sea using extended reach drilling (ERD) technology from onshore. The Liberty prospect is located approximately 5.5 miles offshore in 20 ft of water, approximately 8 miles east of the Endicott development. The development of Liberty was first proposed in 1998 when BPXA submitted a plan to the U.S. Minerals Management Service (MMS) for a production facility on an artificial island in Foggy Island Bay. In 2002, BPXA put the project on hold to review project design and economics after the completion of BPXA's Northstar project. In August 2005, BPXA moved the project onshore to take advantage of advances in extended reach drilling. Liberty wells will extend as much as 8 miles offshore.

Production Activities

Production activities encompass activities in support of oil and gas production within the oil and gas field units. These include: Personnel transportation (automobiles, airplanes, helicopters, boats, rolligons, cat trains, and snowmobiles); and unit operations (building operations, oil production, oil transport, restoration, remediation, and improvement of oil field operations). Production activities are permanent, year-round activities, whereas exploration and development activities are usually temporary and seasonal.

Apart from the production units and facilities, operated by BP Exploration Alaska, Inc. and ConocoPhillips Alaska, Inc., that have been covered under previous incidental take regulations (Greater Prudhoe Bay, Endicott, Milne

Point, Badami, Northstar, Kuparuk River, Alpine), there are three developments that could possibly be in the oil production phase within the next 5 years. The Alpine West Development, operated by ConocoPhillips Alaska, Inc., is scheduled to begin oil production in 2006. NEPA assessment has been completed for this program.

Two other production projects are in earlier stages of development and have the potential to be producing oil within the timeframe of the proposed regulations. They are the Oooguruk Development, operated by Pioneer Natural Resources Alaska, Inc. and the Nikaitchuq Development, operated by Kerr-McGee Oil and Gas Corporation. Neither project has completed environmental review under NEPA; however, an Environmental Information Document for Oooguruk and an Environmental Evaluation Document for Nikaitchuq are currently in review. We conducted our analysis of the potential for future production and the potential effects from these sites during the 5-year period of regulations using these environmental documents. The Service will review final NEPA documentation when it becomes available for Oooguruk and Nikaitchuq to determine whether the anticipated effects from production at each facility are within the scope of effects analyzed in this rule. If the activities and potential impacts are within the scope of activities and impacts analyzed in this rule, LOAs may be issued for the activity.

Proposed production activities will increase the total area of the industry activity in the geographic region; however, oil production levels are expected to decrease during the 5-year regulatory period, despite new fields initiating production. This is due to current producing fields reducing output and new fields not maintaining the loss of that output. Current monitoring and mitigation measures, described later, will be kept in place.

Evaluation

During the period covered by the proposed regulations, we anticipate the level of activity per year at existing production facilities, as well as levels of new annual exploration and development activities, will be similar to that which occurred under the previous regulations, although exploration and development may shift to different locations and new production facilities will add to the overall Industry footprint. Additional onshore and offshore production facilities are being considered within the timeframe of these regulations, potentially adding to the total permanent activities in the area.

Biological Information

Pacific Walrus

The Pacific walrus (*Odobenus rosmarus divirgens*), which includes about 80 percent of the world's walrus population, occurs primarily in the Bering and Chukchi seas. The most recent reported survey estimate (1990) for the Pacific walrus population was approximately 200,000 animals. Currently, the size and trend of the walrus population is unknown.

Walrus distribution is closely tied to the movements of sea ice in the Chukchi and Bering seas. In winter and early spring, the entire walrus population congregates on the pack ice in the Bering Sea, south of St. Lawrence Island. As the ice edge retreats northward, females with dependent young move north into the Chukchi Sea. A few walrus may move east into the Beaufort Sea, but the majority of the population occurs south and west of Barrow, Alaska, which is outside the area covered by these regulations. Adult and subadult males remain to the south, where they come ashore at terrestrial ''haulouts'' in Bristol Bay, Alaska, or along the Russian coast. There are no known haulout sites from Point Barrow to Demarcation Point. As the ice edge advances southward in the fall, walrus reverse their migration, where they re-group on the Bering Sea pack ice.

Pacific walrus mainly feed on bivalve mollusks obtained from bottom sediments along the shallow continental shelf, typically at depths of 80 meters (262 ft) or less. Walrus are also known to feed on a variety of benthic invertebrates such as worms, snails, and shrimp and some slow-moving fish; some walrus feed on seals and seabirds. Mating usually occurs between January and March. Implantation of a fertilized egg is delayed until June or July. Gestation lasts 11 months (a total of 15 months after mating) and birth occurs between April and June during the annual northward migration. Calves weigh about 63 kilograms (139 pounds) at birth and are usually weaned by age two. Females give birth to one calf every two or more years. This reproductive rate is much lower than other pinnipeds; however, some walrus may live to age 40 and remain reproductively active until late in life.

Walrus sightings in the Beaufort Sea have consisted solely of widely scattered individuals and small groups. For example, while walrus have been encountered and are present in the Beaufort Sea, there were only five sightings of walrus between 146° and 150° W during annual aerial surveys conducted from 1979 to 1995. In addition, since 1993, nine walrus sightings have been reported during Industry monitoring efforts.

Polar Bear

Polar bears (*Ursus maritimus*) occur throughout the Arctic. In Alaska, they have been observed as far south in the eastern Bering Sea as St. Matthew Island and the Pribilof Islands, but they are most commonly found within 180 miles of the Alaskan coast of the Chukchi and Beaufort seas, from the Bering Strait to the Canadian border. Two stocks occur in Alaska: (1) Bering–Chukchi Seas stock; and (2) the Southern Beaufort Sea stock. A reliable population estimate is not available for the Bering–Chukchi Sea stock. The Southern Beaufort Sea population (from Point Hope, Alaska, to Banks Island, Northwest Territories) was estimated at 2,200 bears in 2002. The most recent population growth rate was estimated at 2.4 percent annually based on data from 1982 through 1992, although the population is believed to have slowed its growth rate or stabilized since 1992.

Polar bear distribution and use of coastal areas during the fall open water period has increased in recent years in the Beaufort Sea. The increase in use of coastal areas by polar bears has been shown to be related to environmental conditions that affect the position of the pack ice at that time of year. In years when the pack ice has retreated to a maximum extent, greater numbers of bears are encountered on shore. Based on the increasing trend of retreating ice during summer months we anticipate that increased numbers of polar bears will be using terrestrial areas during the fall period. In addition during the last ten years a higher proportion of radio collared female polar bears have denned on land, 60 percent, versus sea ice, 40 percent. In the previous 15 years approximately 40 percent of the dens were located on land and 60 percent were on sea ice. The geographic distribution of land denning also appears to have shifted westerly in recent years. Although the total numbers of dens that occur annually is relatively small, we expect a greater likelihood that dens will be located in suitable terrestrial habitats in the future based on trends. Generalized terrestrial denning habitat has been delineated within the area and is useful in planning and evaluating industrial projects.

The changes in fall coastal polar bear distributions and denning do not occur as a steady constant and fluctuate

annually. The recent changes in fall distribution and den site selection are believed to be associated with climatic changes and corresponding effects on sea ice habitat.

To monitor potential changes from 2000 to 2005, the Service conducted systematic coastal aerial surveys for polar bears from Point Barrow to the Alaska-Canada border. During these surveys, up to 15 polar bears at Cross Island and 80 polar bears on Barter Island were observed within a 2-mile radius of subsistence-harvested bowhead whale carcasses. During one survey in October 2002, the Service observed 114 polar bears on barrier islands and the coastal mainland from Cape Halkett to Barter Island, a distance of approximately 1,370 km. An additional estimated 100 bears were in the Barrow vicinity, outside of the survey area during 2002.

During these surveys, an average of 43 polar bears per survey year (range: 16 to 74 bears/survey year) were observed in the portion of the North Slope coastline where the North Slope oil and gas facilities are located. This portion, from Atigaru Point to Brownlow Point, contained approximately 600 km of main coastline and 300 km of barrier island coastline. The average density of bears per survey-year in this area was 20.0 km per bear. The average density of bears per survey-year in the region around Kaktovik, where bears fed on subsistence-harvested carcasses, was 1.94 km per bear.

Polar bears spend most of their time in nearshore, shallow waters over the continental shelf associated with the shear zone and the active ice adjacent to the shear zone. Sea ice and food availability are two important factors affecting the distribution of polar bears. Although opportunistic feeders, polar bears feed primarily on ringed seals (*Phoca hispida*) and to a much lesser extent on bearded seals (*Erignathus barbatus*). Polar bears may also come onshore to feed on human refuse or marine mammal carcasses found on coastal beaches and barrier islands.

Nearshore, Alaskan Southern Beaufort Sea polar bears are generally widely distributed in low numbers across the Beaufort Sea area; however, polar bears have been observed congregating on the barrier islands in the fall and winter because of available food and favorable environmental conditions. Polar bears will occasionally feed on bowhead whale (*Balaena mysticetus*) carcasses on Cross and Barter Islands and Point Barrow areas where bowhead whales are harvested for subsistence purposes.

Although insufficient data exist to accurately quantify polar bear denning along the Alaskan Beaufort Sea coast, dens in the area are less concentrated than for other areas in the Arctic. Females without dependent cubs breed in the spring. Females with cubs do not mate. Pregnant females enter maternity dens by late November, and the young are usually born in late December or early January. Only pregnant females den for an extended period during the winter; however, other polar bears may excavate temporary dens to escape harsh winter winds. An average of two cubs is usually born, and after giving birth, the female and her cubs remain in the den where the cubs are nurtured until they can walk and stay close to the female. Reproductive potential (intrinsic rate of increase) is low. The average reproductive interval for a polar bear is 3 to 4 years, and a female polar bear may produce about 8 to 10 cubs in her lifetime; 50 to 60 percent of the cubs will survive. Female bears can be quite sensitive to disturbances during this denning period.

In late March or early April, the female and cubs emerge from the den. If the mother moves young cubs from the den before they can walk or withstand the cold, mortality to the cubs may increase. Therefore, it is thought that successful denning, birthing, and rearing activities require a relatively undisturbed environment. Radio and satellite telemetry studies indicate that denning in multi-year pack ice in the Alaskan Beaufort Sea is common. Between 1981 and 1991, of the 90 dens found in the Beaufort Sea, 48 (53 percent) were on pack ice. Terrestrial denning accounted for 47 percent in the same study. The highest density of land dens occur along the coastal barrier islands of the eastern Beaufort Sea and within the Arctic National Wildlife Refuge. Researchers also suggested that females exhibit fidelity to den substrates (*e.g.*, sea ice or terrestrial) rather than geographic locations.

Effects of Oil and Gas Industry Activities on Subsistence Uses of Marine Mammals

Pacific walrus and polar bears have been traditionally harvested by Alaska Natives for subsistence purposes. The harvest of these species plays an important role in the culture and economy of many villages throughout coastal Alaska. Walrus meat is often consumed, and the ivory is used to manufacture traditional arts and crafts. Polar bears are primarily hunted for their fur, which is used to manufacture cold weather gear; however, their meat is also consumed. Although walrus and polar bears are a part of the annual subsistence harvest of most rural communities on the North Slope of Alaska, these species are not as significant a food resource as bowhead whales, seals, caribou, and fish.

An exemption under section 101(b) of the MMPA allows Alaska Natives who reside in Alaska and dwell on the coast of the North Pacific Ocean or the Artic Ocean to take polar bears and walrus if such taking is for subsistence purposes or occurs for purposes of creating and selling authentic native articles of handicrafts and clothing, as long as the take is not done in a wasteful manner. Sport hunting of both species has been prohibited in the United States since enactment of the MMPA in 1972.

Pacific Walrus—Harvest Information

Few walrus are harvested in the Beaufort Sea along the northern coast of Alaska as the primary range of Pacific walrus is west and south of the Beaufort Sea. Walrus constitute a small portion of the total marine mammal harvest for the village of Barrow. According to records from the Service's Marking, Tagging and Reporting Program; from 1994 to 2004, 322 walrus were reported taken by Barrow hunters. Reports indicate that up to four animals were taken east of Point Barrow, within the limits of the incidental take regulations. Hunters from Nuiqsut and Kaktovik do not normally hunt walrus unless the opportunity arises. They have reported taking only three walrus since the inception of the regulations. Two percent of the walrus harvest for Barrow, Nuiqsut, and Kaktovik has occurred within the geographic range of the incidental take regulations since 1994.

Polar Bear—Harvest Information

Based on movements, the Southern Beaufort Sea polar bear stock inhabits areas of Alaska and Canada. Alaska Natives from coastal villages are permitted to harvest polar bears. There are no restrictions on the number, season, or age of polar bears that can be harvested in Alaska unless the population is declared depleted under the MMPA and harvest is found to prevent recovery. Presently, it is thought that the current levels of harvest are sustainable for the Southern Beaufort Sea population. Although there are no restrictions under the MMPA, a more restrictive Native-to-Native agreement between the Inupiat from Alaska and the Inuvialuit in Canada was created in 1988. This agreement, referred to as the Inuvialuit-Inupiat Polar Bear Management Agreement, established quotas and recommendations concerning protection of denning females, family groups, and methods of

take. Although this Agreement does not have the force of law from either the Canadian or the United States government, the users have abided by the terms set forth by the Inuvialuit-Inupiat Agreement. In Canada, users are subject to provincial regulations consistent with the Agreement. Commissioners for the Inuvialuit-Inupiat Agreement set the original quota at 76 bears in 1988, and it was later increased to 80. The quota was based on estimates of the population size and age specific estimates of survival and recruitment. One estimate suggests that harvest up to 1.5 percent of the adult females was sustainable. Combining this estimate and a 2:1 sex ratio (male:female) of the harvest ratio, 4.5 percent of the total population could be harvested each year.

The Service has monitored the Alaska polar bear harvest since 1980. The Native subsistence harvest from the Southern Beaufort Sea has remained relatively consistent since 1980 and averages 36 bears per year. The combined harvest from Alaska and Canada from the Southern Beaufort Sea appears sustainable and equitable. During the last 5 years (2000–2004), 97 bears were harvested by residents of Barrow, 15 for Kaktovik, 13 for Nuiqsut, 30 for Wainwright, and 2 for Atqasuk. The Native subsistence harvest is the greatest source of mortality related to human activities, although several bears have been killed during research activities, through euthanasia of sick or injured bears, accidental drownings, or in defense of human life by non-Natives.

Plan of Cooperation

As a condition of incidental take authorization, any applicant requesting an LOA is required to present a Plan of Cooperation with the Native Communities most likely affected by the activity. The North Slope native communities involved include Barrow, Nuiqsut, and Kaktovik. Polar bear and Pacific walrus inhabiting the Beaufort Sea represent a small portion, in terms of the number of animals, of the total subsistence harvest of fish and wildlife for the villages of Barrow, Nuiqsut, and Kaktovik. Despite this, harvest of these species is important to Alaska Natives. An important aspect of the LOA process, therefore, is that prior to issuance of an LOA, Industry must provide evidence to us that an adequate Plan of Cooperation has been coordinated with any affected subsistence community or, as appropriate, with the Eskimo Walrus Commission, the Alaska Nanuuq Commission, and the North Slope Borough.

Included as part of the Plan of Cooperation and the overall State and Federal permitting process of Industry activities, Industry engages the Native communities in numerous informational meetings. During these community meetings, Industry must ascertain if community responses indicate that impact to subsistence uses will occur as a result of activities in the requested LOA. If community concerns suggest that industry activities may have an impact on the subsistence uses of these species, the Plan of Cooperation must provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interfering with the availability of polar bear and walrus for subsistence harvest.

Evaluation

Subsistence use data regarding polar bears and Pacific walrus supporting Industry Plans of Cooperation, which were gathered to supplement Industry LOA requests in 2003 and 2004 (a total of 39 LOA requests), indicated that there were no unmitigable concerns from the potentially affected communities regarding the availability of these species for subsistence uses based on the specified activity and location of these projects. This information was based on public meeting testimonies, phone conversations, and written statements Industry operators received from the public and community representatives. This suggests that recent Industry activities have had little impact on subsistence uses by Barrow, Nuiqsut, and Kaktovik in the geographic region.

Although all three communities (Barrow, Nuiqsut, and Kaktovik) are located in the geographic area of the rule, Nuiqsut is the community most likely affected by Industry activities due to its close proximity to Industry activities. For this rule, we determined that the total taking of polar bears and walrus will not have an unmitigable adverse impact on the availability of these species for subsistence uses to Nuiqsut residents during the duration of the regulation. We base this conclusion on: The results of coastal aerial surveys conducted within the area during the past 3 years; direct observations of polar bears occurring on Cross Island during Nuiqsut's annual fall bowhead whaling efforts; and anecdotal reports and recent sightings of polar bears by Nuiqsut residents. In addition, we have received no evidence or reports that bears are being deflected (*i.e.*, altering habitat use patterns by avoiding certain areas) or being impacted in other ways by the existing level of oil and gas activity near communities or traditional hunting areas that would diminish their availability for subsistence use, and we do not expect any change in the impact of future activities during the regulatory period.

Barrow and Kaktovik are expected to be affected to a lesser degree by oil and gas activities than Nuiqsut, due to their distance from known Industry activities during the 5-year period of the regulations. Through aerial surveys, direct observations, and personal communication with hunters, it appears that subsistence opportunities for bears and walrus have not been impacted by Industry and we do not anticipate any change from the impact of future activities during the regulatory period.

Industry activity locations will change during the 5-year regulatory period and community concerns regarding the effect on subsistence uses by Industry may arise due to these potential changes in activity location. Industry Plans of Cooperation will need to remain proactive in order to address potential impacts on the subsistence uses by affected communities. Open communication through venues such as public meetings, which allow communities to express feedback prior to the initiation of operations, is necessary. If community subsistence use concerns arise from new activities, appropriate mitigation measures are available and will be applied, such as a cessation of certain activities at certain locations and during certain times of the years, *i.e.*, hunting seasons. Hence, we find that any take will not have an unmitigable adverse impact on the availability of polar bears or walrus for subsistence uses by residents of the affected communities.

Potential Effects of Oil and Gas Industry Activities Other Than Waste Product Discharge and Oil Spills on Pacific Walrus and Polar Bears

Individual walrus and polar bears can encounter Industry activities in numerous ways. Some of these potential occurrences are listed below in the following sections. They describe Industry effects that may occur on Pacific walrus and polar bears. These include: (1) Noise disturbance; (2) physical obstructions; and (3) human encounters.

Pacific Walrus

Walrus are not present in the region of activity during the ice-covered season and occur infrequently in the region during the open-water season. Certain activities, described below, associated with oil and gas activities during the open-water season can potentially

disturb walrus. Despite the potential for disturbance, there is no indication that walrus have been injured during an encounter by industry activities on the North Slope, and there has been no evidence of lethal takes to date.

1. Noise Disturbance

Industry activities that generate noise include air and vessel traffic, seismic surveys, ice breakers, supply ships, and drilling. Noise may disturb or displace Pacific walrus by preventing sufficient rest, increasing stress, increasing energy expenditure, interfering with feeding, masking communication, or impairing thermoregulation of calves that spend too much time in the water. The potential impact of Industry noise on walrus may be limited to individuals rather than the population due to their geographic range and seasonal distribution within the proposed geographic region. For example, Pacific walrus generally inhabit the pack ice of the Bering Sea and do not normally range into the Beaufort Sea, although individuals and small groups are occasionally observed. In addition, the winter range of the Pacific walrus is well beyond the geographic area covered by these regulations (as defined above).

Reactions of marine mammals to noise sources, particularly mobile sources such as marine vessels, vary. Reactions depend on the individuals' prior exposure to the disturbance source and their need or desire to be in the particular habitat or area where they are exposed to the noise and visual presence of the disturbance sources. Walrus are typically more sensitive to disturbance when hauled out on land or ice than when they are in the water. In addition, females and young are generally more sensitive to disturbance than adult males.

Noise generated by Industry activities, whether stationary or mobile, has the potential to disturb small numbers of walrus. The response of walrus to sound sources may be either avoidance or tolerance.

A. Stationary Sources

Currently, Endicott, the BP's Saltwater Treatment Plant (located on the West Dock Causeway), and Northstar, are the only offshore facilities that could produce noise that has the potential to disturb walrus. Walrus are rarely in the vicinity of these facilities, although three walrus have hauled out on Northstar Island since its construction in 2000 and a walrus was observed swimming near the Saltwater Treatment Plant in 2004. In instances where walrus have been seen near these facilities, they have appeared to be attracted to them, possibly as a resting area or haulout.

B. Mobile Sources

Open-water seismic exploration produces underwater sounds, typically with airgun arrays that may be audible numerous kilometers from the source. Such exploration activities could potentially disturb walrus at varying ranges. In addition, source levels are thought to be high enough to cause hearing damage in pinnipeds in proximity to the sound. Therefore, it is possible that walrus within the 190-decibel (dB re 1 µPa) safety radius sound cone of seismic activities (Industry standard) could suffer temporary threshold shift; however, the use of acoustic safety radii and monitoring programs are designed to ensure that marine mammals are not exposed to potentially harmful noise levels. Previous open-water seismic exploration has been conducted in nearshore ice-free areas. This is the area where any future open-water seismic exploration will occur during the duration of this rule. It is highly unlikely that walrus will be present in these areas, and therefore, it is not expected that seismic exploration would disturb walrus.

C. Vessel Traffic

Walrus react variably to noise from vessel traffic; however, it appears that low-frequency diesel engines cause less of a disturbance than high-frequency outboard engines. In addition, walrus densities within their normal distribution are highest along the edge of the pack ice, and Industry vessel traffic typically avoids these areas. The reaction of walrus to vessel traffic is highly dependent on distance, vessel speed, as well as previous exposure to hunting. Walrus in the water appear to be less readily disturbed by vessels than walrus hauled out on land or ice. Furthermore, barges and vessels associated with Industry activities travel in open-water and avoid large ice floes or land where walrus are likely to be found.

Underwater noise from vessel traffic in the Beaufort Sea may ''mask'' ordinary communication between individuals by preventing them from locating one another. It may also prevent walrus from using potential habitats in the Beaufort Sea and may have the potential to impede movement. Vessel traffic will likely increase if offshore Industry expands and may increase if warming waters and seasonally reduced sea ice cover alter northern shipping lanes.

D. Aircraft Traffic

Aircraft overflights may disturb walrus. Reactions to aircraft vary with range, aircraft type, and flight pattern, as well as walrus age, sex, and group size. Adult females, calves, and immature walrus tend to be more sensitive to aircraft disturbance. Although the intensity of the reaction to noise is variable, walrus are probably most susceptible to disturbance by fast-moving aircraft. In 2002, a walrus hauled out near the SDC on the McCovey prospect was disturbed when a helicopter landed on the SDC. However, most aircraft traffic is in nearshore areas, where there are typically few to no walrus.

2. Physical Obstructions

Based on known walrus distribution and the very low numbers found in the Beaufort Sea near Prudhoe Bay, it is unlikely that walrus movements would be displaced by offshore stationary facilities, such as the Northstar Island or causeway-linked Endicott, or vessel traffic. There is no indication that the few walrus that used Northstar Island as a haulout in 2001 were displaced from their movements. Vessel traffic could temporarily interrupt the movement of walrus, or displace some animals when vessels pass through an area. This displacement would probably have minimal or no effect on animals and would last no more than a few hours.

3. Human Encounters

Human encounters with walrus could occur in the course of industry activities, although such encounters would be rare due to the limited distribution of Pacific walrus in the Beaufort Sea. These encounters may occur within certain cohorts of the population, such as calves or animals under stress. In 2004, a suspected orphaned calf hauled-out on the armor of Northstar Island numerous times over a 48-hour period, causing Industry to cease certain activities and alter work patterns before it disappeared in stormy seas.

Evaluation

Industry noise disturbance and associated vessel traffic may have a more pronounced impact than physical obstructions or human encounters on walrus in the Beaufort Sea. However, due to the limited number of walrus inhabiting the geographic region during the open-water season, the Service expects minimal impact to individual walrus and a negligible impact on this stock during the 5-year regulatory period.

Polar Bear

Polar bears are present in the region of activity and, therefore, oil and gas activities could impact polar bears in various ways during both open-water and ice-covered seasons. Impacts from: (1) Noise disturbance; (2) physical obstructions; and (3) human encounters are described below.

1. Noise Disturbance

Noise produced by Industry activities during the open-water and ice-covered seasons could potentially result in takes of polar bears. During the ice-covered season, denning female bears, as well as mobile, non-denning bears, could be exposed to oil and gas activities and potentially affected in different ways. The best available scientific information indicates that female polar bears entering dens, or females in dens with cubs, are more sensitive than other age and sex groups to noises.

Noise disturbance can originate from either stationary or mobile sources. Stationary sources include: Construction, maintenance, repair, and remediation activities; operations at production facilities; flaring excess gas; and drilling operations from either onshore or offshore facilities. Mobile sources include: Vessel and aircraft traffic; open-water seismic exploration; winter vibroseis programs; geotechnical surveys; ice road construction and associated vehicle traffic, including tracked vehicles and snowmobiles; drilling; dredging; and ice-breaking vessels.

A. Stationary Sources

All production facilities on the North Slope in the area to be covered by this rulemaking are currently located within the landfast ice zone. Typically, most polar bears occur in the active ice zone, far offshore, hunting throughout the year; although some bears also spend a limited amount of time on land, coming ashore to feed, den, or move to other areas. At times, usually during the fall season when fall storms and ocean currents may deposit ice-bound bears on land, bears may remain along the coast or on barrier islands for several weeks until the ice returns.

Noise produced by stationary Industry activities could elicit several different responses in polar bears. The noise may act as a deterrent to bears entering the area, or the noise could potentially attract bears. Attracting bears to these facilities, especially exploration facilities in the coastal or nearshore environment, could result in human-bear encounters, which could result in unintentional harassment, lethal take, or intentional hazing (under separate authorization) of the bear.

During the ice-covered season, noise and vibration from Industry facilities may deter females from denning in the surrounding area, even though polar bears have been known to den in close proximity to industrial activities. In 1991, two maternity dens were located on the south shore of a barrier island within 2.8 km (1.7 mi) of a production facility. Recently, industrial activities were initiated while two polar bears denned near those activities. During the ice-covered seasons of 2000–2001 and 2001–2002, dens known to be active were located within approximately 0.4 km and 0.8 km (0.25 mi and 0.5 mi) of remediation activities on Flaxman Island without any observed impact to the polar bears.

In contrast, information exists indicating that polar bears within the geographic area of these regulations may have abandoned dens in the past due to exposure to human disturbance. For example, in January 1985, a female polar bear may have abandoned her den due to rolligon traffic, which occurred between 250 and 500 meters from the den site. Researcher disturbance created by camp proximity and associated noise, which occurred during a den emergence study in 2002 on the North Slope, may have caused a female bear and her cub(s) to abandon their den and move to the ice sooner than necessary. The female was observed later without the cub(s). While such events may have occurred, information indicates they have been infrequent and isolated, and will continue to be so in the future.

In addition, polar bears exposed to routine industrial noises may acclimate to those noises and show less vigilance than bears not exposed to such stimuli. This implication came from a study that occurred in conjunction with industrial activities performed on Flaxman Island in 2002 and a study of undisturbed dens in 2002 and 2003 (N = 8). Researchers assessed vigilant behavior with two potential measures of disturbance: Proportion of time scanning their surroundings and the frequency of observable vigilant behaviors. Bears exposed to industrial activity spent less time scanning their surroundings than bears in undisturbed areas and engaged in vigilant behavior significantly less often.

B. Mobile Sources

In the southern Beaufort Sea, during the open-water season, polar bears spend the majority of their lives on the pack ice, which limits the chances of impacts on polar bears from Industry activities. Although polar bears have been documented in open-water, miles from the ice edge or ice floes, this has been a relatively rare occurrence. In the open-water season, Industry activities are generally limited to vessel-based exploration activities, such as ocean-bottom cable (OBC) and shallow hazards surveys. These activities avoid ice floes and the multi-year ice edge; however, they may contact bears in open water.

C. Vessel Traffic

Vessel traffic would most likely result in short-term behavioral disturbance only. During the open-water season, most polar bears remain offshore in the pack ice and are not typically present in the area of vessel traffic. Barges and vessels associated with Industry activities travel in open-water and avoid large ice floes.

D. Aircraft Traffic

Routine aircraft traffic should have little to no effect on polar bears; however, extensive or repeated overflights of fixed-wing aircraft or helicopters could disturb polar bears. Behavioral reactions of non-denning polar bears should be limited to short-term changes in behavior and would have no long-term impact on individuals and no impacts on the polar bear population. In contrast, denning bears may abandon or depart their dens early in response to repeated noise produced by extensive aircraft overflights. Mitigation measures, such as minimum flight elevations over polar bears, or areas of concern, and flight restrictions around known polar bear dens, would be required, as appropriate, to reduce the likelihood that bears are disturbed by aircraft.

E. Seismic Exploration

Although polar bears are typically associated with the pack ice during summer and fall, open-water seismic exploration activities can encounter polar bears in the central Beaufort Sea in late summer or fall. It is unlikely that seismic exploration activities or other geophysical surveys during the open-water season would result in more than temporary behavioral disturbance to polar bears. Polar bears normally swim with their heads above the surface, where underwater noises are weak or undetectable.

Noise and vibrations produced by oil and gas activities during the ice-covered season could potentially result in impacts on polar bears. During this time of year, denning female bears as well as mobile, non-denning bears could be exposed to and affected differently by potential impacts from seismic activities. As stated earlier, disturbances

to denning females, either on land or on ice are of particular concern.

As part of the LOA application for seismic surveys during denning season, Industry provides us with the proposed seismic survey routes. To minimize the likelihood of disturbance to denning females, we evaluate these routes along with information about known polar bear dens, historic denning sites, and delineated denning habitat.

2. Physical Obstructions

There is little chance that Industry facilities would act as physical barriers to movements of polar bears. Most facilities are located onshore where polar bears are only occasionally found. The offshore and coastal facilities are most likely to be approached by polar bears. The Endicott Causeway and West Dock Causeway and facilities have the greatest potential to act as barriers to movements of polar bears because they extend continuously from the coastline to the offshore facility. Yet, because polar bears appear to have little or no fear of man-made structures and can easily climb and cross gravel roads and causeways, bears have frequently been observed crossing existing roads and causeways in the Prudhoe Bay oilfields. Offshore production facilities, such as Northstar, may be approached by polar bears, but due to their layout (*i.e.*, continuous sheet pile walls around the perimeter) and monitoring plan the bears may not gain access to the facility itself. This situation may present a small-scale, local obstruction to the bears' movement, but also minimizes the likelihood of human-bear encounters.

3. Human Encounters

Human encounters can be dangerous for both the polar bear and the human. Whenever humans work in the habitat of the animal, there is a chance of an encounter, even though, historically, such encounters have been uncommon in association with Industry.

Although bears may be found along the coast during open-water periods, most of the Southern Beaufort Sea bear stock inhabits the multi-year pack ice during this time of year. Encounters are more likely to occur during fall and winter periods when greater numbers of the bears are found in the coastal environment searching for food and possibly den sites later in the season. Potentially dangerous encounters are most likely to occur at gravel islands or on-ice exploratory sites. These sites are at ice level and are easily accessible by polar bears. Industry has developed and uses devices to aid in detecting polar bears, including bear monitors and motion detection systems. Industry takes steps to actively prevent bears from accessing facilities using safety gates and fences.

Offshore production islands, such as the Northstar production facility, could potentially attract polar bears. Indeed, in 2004, Northstar reported 37 sightings in which 54 polar bears were observed. Most bears were observed as passing through the area. Northstar accounted for 41 percent of all polar bear observations Industry-wide in 2004, although many of these bears were observed from a distance and appeared to be moving through the area. Such offshore facilities could potentially increase the rate of human-bear encounters, which could result in increased incident of harassment of bears. Employee training and company policies are also implemented to reduce and mitigate such encounters.

Depending upon the circumstances, bears can be either repelled from or attracted to sounds, smells, or sights associated with Industry activities. In the past, such interactions have been mitigated through conditions on the LOA, which require the applicant to develop a polar bear interaction plan for each operation. These plans outline the steps the applicant will take, such as garbage disposal procedures, to minimize impacts to polar bears by reducing the attraction of Industry activities to polar bears. Interaction plans also outline the chain of command for responding to a polar bear sighting. In addition to interaction plans, Industry personnel participate in polar bear interaction training while on site.

Employee training programs are designed to educate field personnel about the dangers of bear encounters and to implement safety procedures in the event of a bear sighting. The result of these polar bear interaction plans and training allows personnel on site to detect bears and respond safely and appropriately. Often, personnel are instructed to leave an area where bears are seen. Many times polar bears are monitored until they move out of the area. Sometimes, this response involves deterring the bear from the site. If it is not possible to leave, in most cases bears can be displaced by using pyrotechnics (*e.g.*, cracker shells) or other forms of deterrents (*e.g.*, the vehicle itself, vehicle horn, vehicle siren, vehicle lights, spot lights, etc.). The purpose of these plans and training is to eliminate the potential for injury to personnel or lethal take of bears in defense of human life. Since the regulations went into effect in 1993, there has been no known instance of a bear being killed nor Industry personnel being injured by a bear as a result of Industry activities. The mitigation measures associated with these regulations have been proven to minimize human-bear interactions and will continue to be requirements of future LOAs, as appropriate.

There is the potential for human activity to contact polar bear dens as well. Known polar bear dens around the oilfield are monitored by the Service. Only a small percentage of the total active den locations are known in any year. Industry routinely coordinates with the Service to determine the location of Industry's activities relative to known dens. General LOA provisions require Industry operations to avoid known polar bear dens by 1 mile. There is the possibility that an unknown den may be encountered during Industry activities. If a previously unknown den is identified, communication between Industry and the Service and the implementation of mitigation measures, such as the 1-mile exclusion area around known dens, would ensure that disturbance is minimized.

Evaluation

The Service anticipates that potential impacts of Industry noise, physical obstructions, and human encounters on polar bears would be limited to short-term changes in behavior and should have no long-term impact on individuals and no impacts on the polar bear population.

Potential impacts will be mitigated through various requirements stipulated within LOAs. A standard condition of LOAs requires Industry projects to have developed a polar bear interaction plan and requires Industry to maintain a 1-mile buffer between industry activities and known denning sites. In addition, we may require Industry to avoid working in known denning habitat until bears have left their dens. To further reduce the potential for disturbance to denning females, we have conducted research, in cooperation with Industry, to enable us to accurately detect active polar bear dens. We evaluated the use of remote sensing techniques, such as FLIR imagery, and the use of scent-trained dogs to locate dens. Based on these evaluations, the use of FLIR technology, coupled with trained dogs, to locate or verify occupied polar bear dens, is a viable technique that could help to minimize impacts of oil and gas industry activities on denning polar bears. These techniques would continue to be required as conditions of LOAs when appropriate.

In addition, Industry has sponsored cooperative research evaluating

transmission of noise and vibration through the ground, snow, ice, and air and the received levels of noise and vibration in polar bear dens. This information has been useful to refine site-specific mitigation measures. Using current mitigation measures, Industry activities have had no known effects on the polar bear population during the period of previous regulations. We anticipate that, with continued mitigation measures, the impacts to denning and non-denning polar bears will be at the same low level as in previous regulations.

Monitoring data suggests that polar bear encounters in the oil fields can fluctuate. Polar bear observations by Industry have increased between 2000 and 2004 (34 observations in 2000 and 89 bear observations in 2004). These include bears observed from a distance and passively moving through the area to aggressive bears that pose a threat to personnel and are hazed for their safety and the safety of Industry personnel. This increase in observations is believed to be due to an increased number of companies requesting incidental take authorizations and an increase in the number of people monitoring bear activities around the facilities. Although bear observations appear to have increased, human-bear encounters remain uncommon events. We anticipate that human-bear encounters during the 5-year period of these regulations will remain as uncommon events.

Potential Impacts of Waste Product Discharge and Oil Spills on Pacific Walrus and Polar Bears

Individual walrus and polar bears can potentially be affected by Industry activities through waste product discharge and oil spills. These potential impacts are described below in the following sections.

Spills are unintentional releases of oil or petroleum products. In accordance with the National Pollutant Discharge Elimination System Permit Program, all North Slope oil companies must submit an oil spill contingency plan. It is illegal to discharge oil into the environment and a reporting system requires operators to report spills. Between 1977 and 1999, an average of 70 oil and 234 waste product spills occurred annually on the North Slope oil fields. Many spills are small (<50 barrels) by Industry standards. Larger spills (≥500 barrels) account for much of the annual volume. Five large spills occurred between 1985 and 1998 on the North Slope. These spills were terrestrial in nature and pose minimal harm to walrus and polar bears. To date, no major offshore spills have occurred on the North Slope.

Spills of crude oil and petroleum products associated with onshore production facilities during ice-covered and open-water seasons are usually minor spills. They can occur during normal operations (*e.g.*, transfer of fuel, handling of lubricants and liquid products, and general maintenance of equipment).

Larger spills are generally production-related and could occur at any production facility or pipeline connecting wells to the Trans-Alaska Pipeline System. In addition to onshore sites, this could include offshore facilities, such as causeway-linked Endicott or the sub-sea pipeline-linked Northstar Island. The trajectories of large offshore spills from Northstar and the proposed Liberty facilities have been modeled to examine potential impacts to polar bears and will be discussed in a later section.

For this rule, oil spills in the marine environment that can accumulate at the ice edge, in ice leads, and similar areas of importance to polar bears and walrus are of particular concern. Likewise, oil spills from offshore production activities, such as Northstar, are of concern because as additional offshore oil exploration and production, such as the Oooguruk and Nikaitchuq projects, occurs, the potential for large spills in the marine environment increases. The Northstar Project transports crude oil from a gravel island in the Beaufort Sea to shore via a 5.9-mile buried sub-sea pipeline. The pipeline is buried in a trench in the sea floor deep enough to reduce the risk of damage from ice gouging and strudel scour. Production of Northstar began in 2001 and currently an estimated 70,000 barrels of oil pass through the pipeline daily. However, spill response and clean-up of an oil spill, especially in broken ice conditions is still problematic where it is unknown if oil could be effectively cleaned up.

Pacific Walrus

As stated earlier, the Beaufort Sea is not within the primary range for the Pacific walrus; therefore, the probability of walrus encountering oil or waste products as a result of a spill from Industry activities is low. Onshore oil spills would not impact walrus unless oil moved into the offshore environment. In the event of a spill during the open-water season, oil in the water column could drift offshore and possibly encounter a small number of walrus. During the ice-covered season, spilled oil would be incorporated into the thickening sea ice, contained, and pumped into collection tanks. During spring melt, oil would be collected by spill response activities, but could eventually contact a limited number of walrus.

Little is known about the effects of oil specifically on walrus; however, hypothetically, walrus may react to oil much like other pinnipeds, such as seals. Adult walrus may not be severely affected by the oil spill through direct contact, but they will be extremely sensitive to any habitat disturbance by human noise and response activities. In addition, due to their gregarious nature, an oil spill would most likely effect multiple individuals in the area.

Walrus calves are most likely to suffer the effects of oil contamination. Female walrus with calves are very attentive, and the calf will stay close to its mother at all times, including when the female is foraging for food. Walrus calves can swim almost immediately after birth and will often join their mother in the water. It is possible that an oiled calf will be unrecognizable to its mother either by sight or by smell, and be abandoned. However, the greater threat may come from an oiled calf that is unable to swim away from the contamination and a devoted mother that would not leave without the calf, resulting in the death of both animals.

Walrus have thick skin and blubber layers for insulation and very little hair. Thus, they exhibit no grooming behavior, which lessens their chance of ingesting oil. Heat loss is regulated by control of peripheral blood flow through the animal's skin and blubber. The peripheral blood flow is decreased in cold water and increased at warmer temperatures. Direct exposure of Pacific walrus to oil is not believed to have any effect on the insulating capacity of their skin and blubber, although it is unknown if oil could affect their peripheral blood flow.

Damage to the skin of pinnipeds can occur from contact with oil because some of the oil penetrates into the skin, causing inflammation and death of some tissue. The dead tissue is discarded, leaving behind an ulcer. While these skin lesions have only rarely been found on oiled seals, the effects on walrus may be greater because of a lack of hair to protect the skin. Direct exposure to oil can also result in conjunctivitis, a condition which is reversible.

Like other pinnipeds, walrus are susceptible to oil contamination in their eyes. Continuous exposure to oil will quickly cause permanent eye damage. Walrus may also expose themselves more often to the oil that has accumulated at the edge of a contaminated shore or ice lead if they repeatedly enter and exit the water.

Inhalation of hydrocarbon fumes presents another threat to marine mammals. In studies conducted on pinnipeds, pulmonary hemorrhage, inflammation, and congestion resulted after exposure to concentrated hydrocarbon fumes for a period of 24 hours. If the walrus were also under stress from molting, pregnancy, etc., the increased heart rate associated with the stress would circulate the hydrocarbons more quickly, lowering the tolerance threshold for ingestion or inhalation.

Walrus are benthic feeders, and much of the benthic prey contaminated by an oil spill would be killed immediately. Others that survived would become contaminated from oil in bottom sediments, possibly resulting in slower growth and a decrease in reproduction. Bivalve mollusks, a favorite prey species of the walrus, are not effective at processing hydrocarbon compounds, resulting in highly concentrated accumulations and long-term retention of the contamination within the organism. In addition, because walrus feed primarily on mollusks, they may be more vulnerable to a loss of this prey species than other pinnipeds that feed on a larger variety of prey. Furthermore, complete recovery of a bivalve mollusk population may take 10 years or more, forcing walrus to find other food resources or move to nontraditional areas.

Evaluation

Waste product or oil spills will have detrimental impacts on individual Pacific walrus if they come in contact with a large volume of oil from a large spill. However, the limited number of walrus in the Beaufort Sea and the potential for a large oil spill, which is discussed in the following Risk Assessment Analysis, limit potential impacts to walrus to only certain events (a large oil spill) and then only to a limited number of individuals.

There are few walrus in the area. In the unlikely event there is an oil spill and walrus in the same area, mitigation measures would minimize any effect. Fueling crews have personnel that are trained to handle operational spills and contain them. If a small offshore spill occurs, spill response vessels are stationed in close proximity and respond immediately.

Polar Bear

The possibility of oil and waste product spills from Industry activities and the subsequent impacts on polar bears are a major concern. Polar bears could encounter oil spills during the open-water and ice-covered seasons in offshore or onshore habitat. Although the majority of the Southern Beaufort Sea polar bear population spends a large amount of their time offshore on the pack ice, some bears are likely to encounter oil from a spill regardless of the season and location.

Small spills of oil or waste products throughout the year by Industry activities could potentially impact small numbers of bears. The effects of fouling fur or ingesting oil or wastes, depending on the amount of oil or wastes involved, could be short term or result in death. For example, in April 1988, a dead polar bear was found on Leavitt Island, approximately 9.3 km (5 nautical miles) northeast of Oliktok Point. The cause of death was determined to be poisoning by a mixture that included ethylene glycol and Rhodamine B dye; however, the source of the mixture was unknown.

During the ice-covered season, mobile, non-denning bears would have a higher probability of encountering oil or other production wastes than non-mobile, denning females. Current management practices by Industry, such as requiring the proper use, storage, and disposal of hazardous materials, minimize the potential occurrence of such incidents. In the event of an oil spill, it is also likely that polar bears would be intentionally hazed to keep them away from the area, further reducing the likelihood of impacting the population.

In 1980, Canadian scientists performed experiments that studied the effects to polar bears of exposure to oil. Effects on experimentally oiled polar bears (where bears were forced to remain in oil for prolonged periods of time) included acute inflammation of the nasal passages, marked epidermal responses, anemia, anorexia, and biochemical changes indicative of stress, renal impairment, and death. In experimental oiling, many effects did not become evident until several weeks after exposure to oil.

Oiling of the pelt causes significant thermoregulatory problems by reducing the insulation value of the pelt in polar bears. Irritation or damage to the skin by oil may further contribute to impaired thermoregulation. Furthermore, an oiled bear would ingest oil because it would groom in order to restore the insulation value of the oiled fur. Experiments on live polar bears and pelts showed that the thermal value of the fur decreased significantly after oiling, and oiled bears showed increased metabolic rates and elevated skin temperatures.

Oil ingestion by polar bears through consumption of contaminated prey, and by grooming or nursing, could have pathological effects, depending on the amount of oil ingested and the individual's physiological state. Death could occur if a large amount of oil were ingested or if volatile components of oil were aspirated into the lungs. Indeed, two of three bears died in the Canadian experiment, and it was suspected that the ingestion of oil was a contributing factor to the deaths. Experimentally oiled bears ingested much oil through grooming. Much of it was eliminated by vomiting and in the feces, but some was absorbed and later found in body fluids and tissues.

Ingestion of sublethal amounts of oil can have various physiological effects on a polar bear, depending on whether the animal is able to excrete or detoxify the hydrocarbons. Petroleum hydrocarbons irritate or destroy epithelial cells lining the stomach and intestine, thereby affecting motility, digestion, and absorption; polar bears may exhibit these symptoms if they ingest oil.

Polar bears swimming in, or walking adjacent to, an oil spill could inhale petroleum vapors. Vapor inhalation by polar bears could result in damage to various systems, such as the respiratory and the central nervous systems, depending on the amount of exposure.

Oil may also affect food sources of polar bears. A local reduction in ringed seal numbers as a result of direct or indirect effects of oil could, therefore, temporarily affect the local distribution of polar bears. A reduction in density of seals as a direct result of mortality from contact with spilled oil could result in polar bears not using a particular area for hunting. Possible impacts from the loss of a food source could reduce recruitment or survival. Also, seals that die as a result of an oil spill could be scavenged by polar bears. This would increase exposure of the bears to hydrocarbons and could result in lethal impact or reduced survival to individual bears.

Evaluation

To date, large oil spills from Industry activities in the Beaufort Sea and coastal regions that would impact polar bears have not occurred, although the development of offshore production facilities and pipelines has increased the potential for large offshore oil spills. With limited background information available regarding oil spills in the Arctic environment, it is unknown what the outcome of such a spill would be if one were to occur. In a large spill (*e.g.*, 5,900 barrels: The size of a rupture in the Northstar pipeline and a complete drain of the subsea portion of the pipeline), oil would be influenced by seasonal weather and sea conditions. These would include temperature,

winds, and, for offshore events, wave action and currents. Weather and sea conditions would also affect the type of equipment needed for spill response and how effective spill cleanup would be. Indeed, spill response drills have been unsuccessful in the cleanup of oil in broken-ice conditions. These factors, in turn, would dictate how large spills impact polar bear and walrus habitat and numbers.

The major concern regarding large oil spills is the impact a spill would have on the survival and recruitment of the Southern Beaufort Sea polar bear population. Currently, this bear population is approximately 2,200 bears. In addition, the maximum sustainable subsistence harvest is 80 bears for this population (divided between Canada and Alaska). The population may be able to sustain the additional mortality caused by a large oil spill of a small number of bears, such as 1 to 5 individuals; however, the additive effect of a worst-case scenario, such as numerous bear deaths (*i.e.*, in the range of 20 to 30) due to direct or indirect effects from a large oil spill may reduce population rates of recruitment or survival. Indirect effects may occur through a local reduction in seal productivity or scavenging of oiled seal carcasses coupled with the subsistence harvest and other potential impacts, both natural and human-induced. The removal of bears from the population would exceed sustainable levels, potentially causing a decline in the bear population and affecting bear productivity and subsistence use.

Potential impacts of Industry waste products and oil spills suggest that individual bears could be impacted by the disturbances. Depending on the amount of oil or wastes involved, the timing and location of a spill, impacts could be short-term, chronic, or lethal. In order for bear population reproduction or survival to be impacted a large volume oil spill would have to take place. The probability of a large oil spill is small (as described in the following Oil Spill Risk Assessment Analysis).

Oil Spill Risk Assessment Analysis

Although these proposed regulations do not authorize lethal take, we analyze the probability of lethal take of a polar bear through our oil spill risk assessment analysis. Currently, there are two offshore Industry facilities producing oil, Endicott and Northstar. Oil spilled from the sub-sea pipeline of an offshore facility, such as Northstar, is a unique scenario that has been considered in previous regulations. Northstar transports crude oil from a gravel island in the Beaufort Sea to shore via a sub-sea pipeline, which is buried in a trench deep enough to theoretically remove the risk of damage from ice gouging and strudel scour. Northstar began producing oil in 2001. Endicott is connected by a causeway to the mainland and began producing oil in 1986.

Other offshore sites are in various states of planning and could be developed to produce oil from the nearshore environments in the future. These include the Oooguruk, Nikaitchuq, and Liberty developments. Although Liberty has completed a draft EIS and has been included in the Risk Assessment Analysis for these regulations, none of the potential offshore production sites have finalized their facilities design and completed their environmental impact documentation. We have modeled oil spill trajectories from the Liberty and Northstar sites for the purposes of the risk assessment. We believe that even though the risk assessment does not specifically model spills from the Oooguruk or Nikaitchuq sites that the results from either would be within the range of expected impacts and adequately reflects the potential impacts from an oil spill at either of these locations.

It is necessary to understand how offshore sites could affect marine mammals if a spill were to occur. A large volume amount of movement and distribution data are available to accurately calculate polar bear densities within the area and we have conducted a thorough analysis. Because of the extremely minimal probability of walrus encountering oil spills, they were not considered in this analysis.

Polar bears would be at risk of adverse impacts if there is an oil spill in the Beaufort Sea. Limited data from a Canadian study suggest that polar bears experimentally oiled with crude oil will most likely die. This finding is consistent with what is known of other marine mammals that rely on their fur for insulation. The Northstar FEIS concluded that mortality of up to 30 polar bears could occur as the result of an oil spill greater than 1,000 barrels. U.S. Geological Survey (USGS) researchers calculated that the number of polar bears potentially oiled at the Liberty prospect was 0 to 25 polar bears for open-water and 0 to 61 bears in the broken-ice period. However, neither estimate for the facilities accounts for the likelihood of spills seasonally during the period that the regulations are in effect.

Two independent lines of evidence were used to assess the potential effects of offshore production, one largely anecdotal and the other quantitative. The anecdotal information is based on Industry site locations and Service studies investigating polar bear aggregations on barrier islands and coastal areas in the Beaufort Sea. This information suggests that polar bear aggregations may occur for brief periods in the fall. The presence and duration of these aggregations are likely influenced by the presence or absence of sea ice near shore and the availability of marine mammal carcasses, notably bowhead whales from subsistence hunts at specific locations. In order for significant impacts on polar bears to occur, an oil spill would have to contact an aggregation of polar bears. We believe the probability of all these events occurring simultaneously is low.

The quantitative assessment of oil spill risk for the current request of incidental take regulations used the method employed in the previous oil spill risk assessment, but with current data. It is based on a risk assessment that considered oil spill probability estimates for two sites (Northstar and Liberty), oil spill trajectory models, and a current polar bear distribution model based on location of satellite-collared females during September and October. Although Liberty was originally designed as an offshore production island, it is currently being developed as an onshore production facility which will drill directionally into the oil prospect. Nevertheless, the Service has included Liberty for this risk assessment as an offshore production island in order to incorporate multiple offshore sample points to analyze.

Methodology

The first step in the risk assessment analysis was to calculate oil spill probabilities at the Northstar and Liberty sites for open-water (September) and broken-ice (October) seasons. We considered spill probabilities for the drilling platform and the sub-sea pipeline, since this is where spills are most likely to occur. Using production estimates from the Northstar FEIS and the Liberty DEIS, we estimated the likelihood of one or more spills greater than 1,000 barrels in size occurring in the marine environment during the 5-year period covered by the proposed regulations.

The second step in the risk assessment was to calculate the number of polar bears that could be oiled from a spill. This involved modeling the probabilistic distribution of bears from current data that could be in the area and overlapping polar bear distributions with oil spill trajectories.

Trajectories previously calculated for Northstar and Liberty sites were used. The trajectories were provided by the MMS. The MMS estimated probable sizes of oil spills from the transportation pipeline and the island as well. These spill sizes ranged from a minimum of 125 barrels to a catastrophic release event of 5,912 barrels. Hence, the size of the modeled spill was set at the worst-case scenario of 5,912 barrels, simulating rupture and drainage of the entire sub-sea pipeline. Each spill was modeled by tracking the location of 500 ''spillets.'' Spillets were driven by wind and currents, and their movements were stopped by the presence of sea ice. Open-water and broken-ice scenarios were each modeled with 360 to 500 simulations. A solid-ice scenario was also modeled in which oil was trapped beneath the ice and did not spread. In this later event, we found it unlikely that polar bears would contact oil, and removed this scenario from further analysis. Each simulation was run for at least 10 days with no cleanup or containment efforts simulated. At the end of each simulation, the size and location of each spill was represented in a geographic information system.

The second component incorporated up-to-date polar bear densities overlapped with the oil spill trajectories. In 2004, USGS completed analysis investigating the potential effects of hypothetical oil spills on polar bears. Movement and distribution information was derived from radio and satellite relocations of collared adult females. Density estimates from 15,308 satellite locations of 194 polar bears collared between 1985 and 2003 was used to estimate the distribution of polar bears in the Beaufort Sea. Using a technique called ''kernel smoothing,'' they created a grid system centered over the Northstar production island and the Liberty site to estimate the number of bears expected to occur within each 1 km^2 grid cell. Standard errors of bear numbers per cell were estimated with resampling procedures. Each of the simulated oil spills was overlaid with the polar bear distribution grid. Oil spill footprints for September and October, the timeframe that hypothesized effects of an oil-spill would be greatest, were estimated using real wind and current data collected between 1980 and 1996. The ARC/Info software was used to calculate overlap, numbers of bears oiled between oil-spill footprints, and polar bear grid-cell values. If a spillet passed through a grid cell, the bears in that cell were considered oiled by the spill.

Finally, the likelihood of occurrence for the number of bears oiled during the duration of the proposed 5-year incidental take regulations was estimated. This was calculated by multiplying the number of polar bears oiled by the spill by the percentage of time bears were at risk for each period of the year, and summing these probabilities.

Results

The number of bears potentially oiled by a simulated 5,912-barrel spill ranged from 0 to 27 polar bears during the September open-water conditions and from 0 to 74 polar bears during the October mixed-ice conditions for Northstar, and from 0 to 23 polar bears during the September open-water conditions and from 0 to 55 polar bears during the October mixed-ice conditions for Liberty. Median number of bears oiled by the simulated 5,912-barrel spill from the Northstar site in September and October were 3 and 11 bears, respectively; equivalent values for the Liberty site were 1 and 3 bears, respectively. Variation among oil spill scenarios was the result of differences in oil spill trajectories among those scenarios and not the result of variation in the estimated bear densities. In October, 75 percent of trajectories from the 5,912-barrel spill at Northstar affected 20 or fewer polar bears, while 75 percent of the trajectories oiled nine or fewer bears when the October spill occurred at our Liberty simulation site.

When calculating the probability that a spill would oil five or more bears during the fall period, we found that oil spills and trajectories were more likely to affect small numbers of bears (five bears) than larger numbers of bears. Thus, for Northstar, the probability of a spill that oils (resulting in mortality) 5 or more bears is 1.0–3.4 percent; for 10 or more bears is 0.7–2.3 percent; and for 20 or more bears is 0.2–0.8 percent. For Liberty, the probability of a spill that will cause a mortality of 5 or more bears is 0.3–7.4 percent; for 10 or more bears is 0.1–0.4 percent; and for 20 or more bears is 0.1–0.2 percent.

Discussion

Northstar Island is nearer the active ice flow zone than Liberty, and it is not sheltered from deep water by barrier islands. These characteristics contribute to more polar bears being distributed in close proximity to the island and to oil being dispersed more quickly and further into surrounding areas. By comparison, oil spill trajectories from Liberty were more erratic in the areas covered and the numbers of bears impacted. Hence, larger numbers of bears were consistently exposed to oil trajectories by Northstar simulations than those modeled for Liberty. This difference was especially pronounced in October spill scenarios. In October, the land-fast ice, inside the shelter of the islands and surrounding Liberty, dramatically restricted the extent of most simulated oil spills in comparison to Northstar, which lies outside the barrier islands and in deeper water. At both locations, simulated oil-spill trajectories affected small numbers of bears far more often than they affected larger numbers of bears. At Liberty, the number of bears affected declined more quickly than they did at Northstar. The proposed Liberty Island production site presents less risk to polar bear than the existing facility at Northstar Island.

The greatest source of uncertainty in the calculations was the probability of an oil spill occurring. The oil spill probability estimates for Northstar and Liberty were calculated using data for sub-sea pipelines outside of Alaska and outside of the Arctic, which likely do not reflect conditions that would be routinely encountered in the Arctic, such as permafrost, ice gouging, and strudel scour in the nearshore environment. They may include other conditions unlikely to be encountered in the Arctic, such as damage from anchors and trawl nets. Consequently, oil spill probabilities as presented in the Northstar FEIS incorporate unquantified levels of uncertainty in their estimate. If the probability of a spill were twice the estimated value, the probability of a spill that would cause a mortality of five or more bears would remain low (approximately 6 percent for Northstar and 1.5 percent for Liberty).

The spill analysis was dependent on numerous assumptions, some of which underestimate, while others overestimate, the potential risk to polar bears. For example, these included variation in spill probabilities during the year (underestimate, overestimate), the length of time the oil spill trajectory model was run (longer time periods would overestimate the risk), whether or not containment occurred during the trajectory model (containment could underestimate the risk), lack of effective hazing to deter wildlife during the model runs (overestimate the risk), contact with a spillet constituting mortality (overestimate the risk), and an even distribution of polar bears. Polar bear aggregations were not included in the various model runs. We determined that the assumptions that will overestimate and underestimate mortalities were generally in balance. Fall coastal aerial surveys have shown that the Northstar and Liberty sites are not associated with large aggregations of bears in the immediate areas, although

aggregations do occur consistently during this time at Cross Island (approximately 17 miles northeast from Northstar and 17 miles northwest of Liberty, respectively) and Barter Island and may occur wherever whale carcasses are present.

Conclusion

We conclude that if an offshore oil spill were to occur during the fall or spring broken-ice periods, a significant impact to polar bears could occur; however, in balancing the level of impact with the probability of occurrence, we conclude that lethal take from an oil spill within the 5-year regulatory period is unlikely. Due to the small volume of oil associated with onshore spills, the various response systems identified in Industry oil spill contingency plans to clean up spills, and mitigation measures used to deter bears away from the affected area for their safety, onshore spills would have little impact on the polar bear population as well.

Documented Impacts of the Oil and Gas Industry on Pacific Walrus and Polar Bears

Pacific Walrus

During the history of the incidental take regulations, the actual impacts from Industry activities on Pacific walrus, documented through monitoring, were minimal. From 1994 to 2004, Industry recorded nine sightings, involving a total of ten Pacific walrus, during the open-water season. In most cases, walrus appeared undisturbed by human interactions; however, three sightings involved potential disturbance to the walrus. Two of three sightings involved walrus hauling out on the armor of Northstar Island and one sighting occurred at the SDC on the McCovey prospect, where the walrus reacted to helicopter noise. The walrus were observed during exploration (three sightings), development (two sightings), and production (four sightings) activities. It is not known if there were any physical effects or impacts to these individual walrus based on the interaction with Industry. We know of no other interactions that occurred between walrus and Industry during the duration of the incidental take program.

Polar Bear

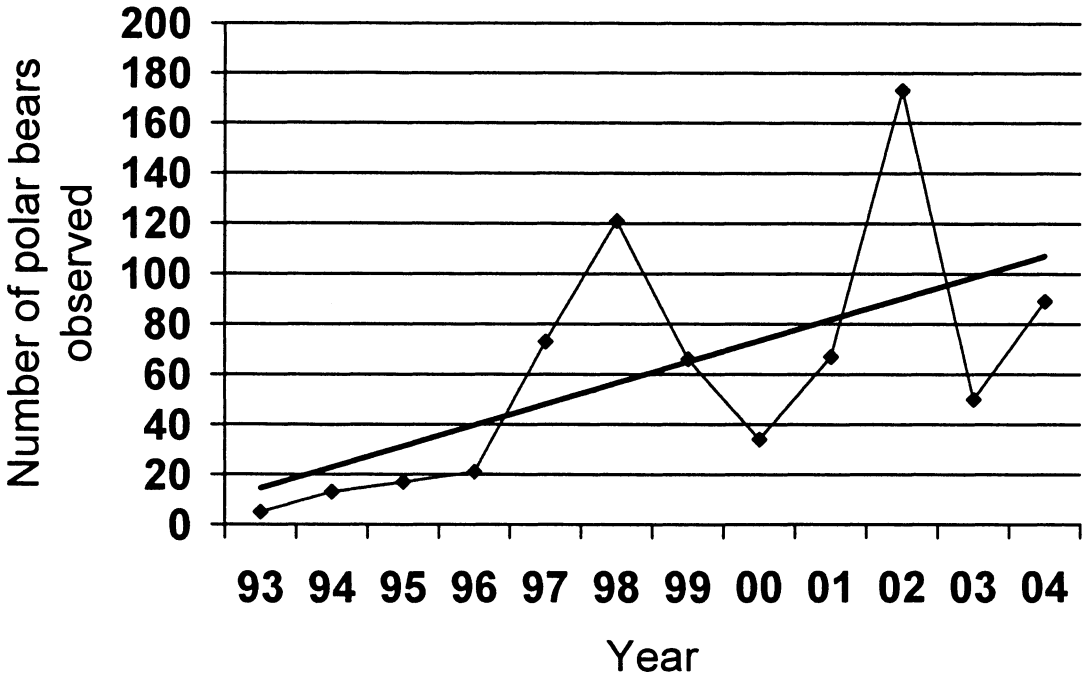
Documented impacts on polar bears by the oil and gas industry during the past 30 years appear minimal. Polar bears spend a limited amount of time on land, coming ashore to feed, den, or move to other areas. At times, fall storms deposit bears along the coastline where bears remain until the ice returns. For this reason, polar bears have mainly been encountered at or near most coastal and offshore production facilities, or along the roads and causeways that link these facilities to the mainland. During those periods, the likelihood of interactions between polar bears and Industry activities increases. We have found that the polar bear interaction planning and training requirements set forth in these regulations and required through the LOA process have increased polar bear awareness and minimized these encounters. LOA requirements have also increased our knowledge of polar bear activity in the developed areas.

No lethal take associated with Industry has occurred during the period covered by incidental take regulations. Prior to issuance of regulations, lethal takes by Industry were rare. Since 1968, there have been two documented cases of lethal take of polar bears associated with oil and gas activities. In both instances, the lethal take was reported to be in defense of human life. In winter 1968–1969, an Industry employee shot and killed a polar bear. In 1990, a female polar bear was killed at a drill site on the west side of Camden Bay. In contrast, 33 polar bears were killed in the Canadian Northwest Territories from 1976 to 1986 due to encounters with Industry. Since the beginning of the incidental take program, which includes measures that minimize impacts to the species, no polar bears have been killed due to encounters associated with current Industry activities on the North Slope. For this reason, Industry has requested that these regulations cover only nonlethal, incidental take.

The majority of actual impacts on polar bears have resulted from direct human-bear encounters. Monitoring efforts by Industry required under previous regulations for the incidental take of polar bears documented various types of interactions between polar bears and Industry. A total of 262 LOAs have been issued for incidental (unintentional) take of polar bears in regard to oil and gas activities between 1993 to 2004: 78 percent were for exploration; 12 percent were for development; and 10 percent were for production activities. A total of 729 polar bear sightings were recorded in monitoring programs during this period. Monitoring programs associated with 21 percent (55 of 262 LOAs) of these activities reported actual sightings of polar bears.

Polar bear observations have generally increased since the inception of the incidental take regulations required observations as part of each activity's monitoring program (Figure 1). This increase is mainly a result of increased monitoring effort through the years. There was a spike in bear observations in 2002 (173 observations) which was caused, in part, by a fall storm that deposited a higher number of bears on the North Coast of Alaska.

Figure 1. Number of polar bear observed per year as a result of monitoring requirements from the Beaufort Sea Incidental Take Program.



More recently, during 2004, the oil and gas industry reported 89 polar bear sightings involving 113 individual bears. Polar bears were more frequently sighted during the months of August to January. Seventy-four sightings were of single bears and 15 sightings consisted of family groups. Offshore oil facilities, Northstar and Endicott, accounted for 63 percent of all polar bear sightings, 42 percent and 21 percent, respectively, documenting Industry activities that occur on or near the Beaufort Sea coast have a greater possibility for encountering polar bears than Industry activities occurring inland. Fifty-nine percent (n = 53) of polar bear sightings consisted of observations of polar bears traveling through or resting near the monitored areas without a perceived reaction to human presence. Forty-one percent (n = 36) of polar bear sightings involved Level B harassment, where bears were deterred from industrial areas with no injury. We have no indication that these encounters, which alter the behavior and movement of individual bears, have an effect on survival and recruitment in the Southern Beaufort Sea polar bear population.

Summary of Take Estimate for Pacific Walrus and Polar Bear

Pacific Walrus

Since walrus are typically not found in the region of Industry activity, there is a minimal probability that Industry activities, including offshore drilling operations, seismic, and coastal activities, will adversely affect any walrus. Walrus observed in the region have typically been lone individuals or small groups, further reducing the number of potential takes expected. There is a possibility of some nonlethal takes occurring at a very low level during the five-year rule from noise, obstructions, and encounters. Furthermore, the majority of walrus hunted by Barrow residents were harvested west of Point Barrow, outside of the area covered by incidental take regulations, while Kaktovik harvested only one walrus within the geographic region. In addition, Industry observations have only recorded nine walrus observations from 1993 to 2004. Given this information, no more than a small number of walrus are likely to be taken during the length of this rule. It is unlikely that there will be any lethal take from normal Industry activities. Takes from an oil spill will depend on the presence of walrus and the size of the spill. It is unlikely that there would be a lethal take from an oil spill in the central Beaufort Sea. Therefore, we do not anticipate any detrimental effects on recruitment or survival.

Polar Bear

Industry exploration, development, and production activities have the potential to incidentally take polar bears. Most of these disturbances are expected to be nonlethal, short-term behavioral reactions resulting in displacement, and should have no more than a minimal impact on individuals. Polar bears could be displaced from the immediate area of activity due to noise and vibrations. Alternatively, they could be attracted to sources of noise and vibrations out of curiosity, which could result in human-bear encounters. It is also possible that noise and vibration from stationary sources could keep females from denning in the vicinity of the source. Furthermore, there is a low chance of injury to a bear during a take and it is unlikely that lethal takes will occur. We do not expect the sum total of these disturbances to affect the rates of recruitment or survival of the Southern Beaufort Sea polar bear population.

Contact with or ingestion of oil could also potentially affect polar bears. Small

oil spills are likely to be cleaned up immediately and should have little chance of affecting polar bears. The probability of a large spill occurring is very small and the impact of a large spill would depend on the distribution of the bears at the time of the spill, the location and size of the spill, and the success of clean-up measures, including efforts to keep bears away from affected areas. Based on the low likelihood of a large spill occurring that would affect a significant number of bears and the proven success of mitigation measures to deter or haze bears from an affected area, the Service has determined it is unlikely that a polar bear will come in contact with oil from a spill in the next 5 years.

Take Summary

Based on the data provided by LOA monitoring reports submitted since 1993 and additional analysis, we have determined that any take caused by Industry since 1993 has had a negligible impact on Pacific walrus and polar bears. Additional information, such as subsistence harvest levels and incidental observations of polar bears near shore, suggests that, although there have been interactions between Industry and polar bears and walrus, populations of these species will not be adversely affected by Industry. The projected level of activities during the period covered by these proposed regulations (exploration, development, and production activities), are similar in scale to previous levels. As stated earlier, prospective production activities will likely increase the total area of Industry infrastructure in the geographic region; however oil production levels are expected to decrease, despite new fields initiating production, due to current producing fields reducing output; and current monitoring and mitigation measures will be kept in place. Therefore, we anticipate that the effect of Industry on polar bears and Pacific walrus during the 5-year period of the regulations will remain comparable to those experienced during previous set of the regulations.

Conclusions

We conclude that any take reasonably likely to or reasonably expected to occur as a result of projected activities will have no more than a negligible impact on Southern Beaufort Sea polar bear stock and Pacific walrus and will not have an unmitigable adverse impact on the availability of polar bears and Pacific walrus for subsistence uses. Based on the previous discussion, we propose the following findings regarding this action:

Impact on Species

Based on the best scientific information available, the results of monitoring data from our previous regulations, the results of our modeling assessments, and the status of the population, we find that any incidental take reasonably likely to result from the effects of oil and gas related exploration, development, and production activities during the period of the rule, in the Beaufort Sea and adjacent northern coast of Alaska will have no more than a negligible impact on polar bears and Pacific walrus. In making this proposed finding, we considered the following: (1) The distribution of the species; (2) the biological characteristics of the species; (3) the nature of oil and gas industry activities; (4) the potential effects of Industry activities and potential oil spills on the species; (5) the probability of oil spills occurring; (6) the documented impacts of industry activities and oil spills on the species, (7) mitigation measures that will be conditions in the LOAs and minimize effects; and (8) other data provided by monitoring programs that have been in place since 1993. We also considered the specific Congressional direction in balancing the potential for a significant impact with the likelihood of that event occurring. The specific Congressional direction that justifies balancing probabilities with impacts follows:

> If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information [53 FR 8474; accord, 132 Cong. Rec. S 16305 (Oct. 15, 1986)].

The Pacific walrus is only occasionally found during the open-water season in the Beaufort Sea. The Beaufort Sea polar bear population is widely distributed throughout its range. Polar bears typically occur in low numbers in coastal and nearshore areas where most Industry activities occur.

We reviewed the effects of the oil and gas industry activities on polar bears and Pacific walrus, which included impacts from noise, physical obstructions, human encounters, and oil spills. Based on our review of these potential impacts, past LOA monitoring reports, and the biology and natural history of Pacific walrus and polar bear, we conclude that any incidental take reasonably likely to or reasonably expected to occur as a result of projected activities will have a negligible impact on polar bear and Pacific walrus populations. Furthermore, we do not expect these disturbances to affect the rates of recruitment or survival for the Pacific walrus and polar bear populations. These proposed regulations do not authorize lethal take and we do not anticipate any lethal take will occur.

We have included potential spill information from the Liberty development (offshore scenario) in our oil spill analysis, to analyze multiple offshore sites (Northstar and Liberty). We have analyzed the likelihood of an oil spill in the marine environment of the magnitude necessary to kill a significant number of polar bears for Northstar and Liberty, and through a risk assessment analysis found that it is unlikely that there will be any lethal take. We have also considered prospective production related activities at the Oooguruk and Nikaitchuq locations in this finding. Thus, after considering the additive effects of existing and proposed development, production, and exploration activities, and the likelihood of any impacts, both onshore and offshore, we find that the total expected takings resulting from oil and gas industry activities will have a negligible impact on polar bear and Pacific walrus populations inhabiting the Beaufort Sea area on the North Slope coast of Alaska.

The probability of an oil spill that will cause significant impacts to Pacific walrus and polar bears is extremely low. However, in the event of a catastrophic spill, we will reassess the impacts to these species and reconsider the appropriateness of authorizations for incidental taking through Section 101(a)(5)(A) of the MMPA.

Our proposed finding of ''negligible impact'' applies to oil and gas exploration, development, and production activities. Generic conditions are attached to each LOA. These conditions minimize interference with normal breeding, feeding, and possible migration patterns to ensure that the effects to the species remain negligible. Generic conditions include: (1) These regulations do not authorize intentional taking of polar bear or Pacific walrus or lethal incidental take; (2) For the protection of pregnant polar bears during denning activities (den selection, birthing, and maturation of cubs) in known and confirmed denning areas, Industry activities may be restricted in specific locations during

specified times of the year; (3) Each activity covered by an LOA requires a site-specific plan of operation and a site-specific polar bear interaction plan. We may add additional measures depending upon site-specific and species-specific concerns. Restrictions in denning areas will be applied on a case-by-case basis after assessing each LOA request and may require pre-activity surveys (*e.g.*, aerial surveys, FLIR surveys, or polar bear scent-trained dogs) to determine the presence or absence of denning activity and, in known denning areas, may require enhanced monitoring or flight restrictions, such as minimum flight elevations, if necessary. We will analyze the required operation and interaction plans to ensure that the level of activity and possible take will be consistent with our proposed finding that total incidental takes will have a negligible impact on polar bear and Pacific walrus and, where relevant, will not have an unmitigable adverse impact on the availability of these species for subsistence uses.

Within the described geographic region of this rule, Industry effects on Pacific walrus and polar bears are expected to occur at a level similar to what has taken place under previous regulations. We anticipate that there will be an increased use of terrestrial habitat in the fall period by polar bears. We also anticipate a slight increased use of terrestrial habitat by denning bears. Nevertheless, we expect no significant impact to these species as a result of these anticipated changes. The proposed mitigation measures will be effective in minimizing any additional effects attributed to seasonal shifts in distribution or denning polar bears during the five-year timeframe of the regulations. It is likely that due to potential seasonal changes in abundance and distribution of polar bears during the fall that more frequent encounters may occur and that Industry may have to implement mitigation measures more often, for example, increasing polar bear deterrence events. In addition, if additional polar bear den locations are detected within industrial activity areas, spatial and temporal mitigation measures, including cessation of activities may be instituted more frequently during the five-year period of the rule.

Impact on Subsistence Take

Based on the best scientific information available and the results of monitoring data, we find that the effects of oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska will not have an unmitigable adverse impact on the availability of polar bears and Pacific walrus for taking for subsistence uses during the period of the rule. In making this proposed finding, we considered the following: (1) Records on subsistence harvest from the Service's Marking, Tagging and Reporting Program; (2) effectiveness of the Plans of Cooperation between Industry and affected Native communities; and (3) anticipated five-year effects of Industry activities on subsistence hunting.

Polar bear and Pacific walrus represent a small portion, in terms of the number of animals, of the total subsistence harvest for the villages of Barrow, Nuiqsut, and Kaktovik. However, the low numbers do not mean that the harvest of these species is not important to Alaska Natives. Prior to receipt of an LOA, Industry must provide evidence to us that an adequate Plan of Cooperation has been presented to the subsistence communities. The plan will ensure that oil and gas activities will continue not to have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This Plan of Cooperation must provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bear and walrus, as warranted.

If there is evidence during the five-year period of the regulations that oil and gas activities are affecting the availability of polar bear or walrus for take for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

Monitoring plans are required to determine effects of oil and gas activities on polar bear and walrus in the Beaufort Sea and the adjacent northern coast of Alaska. Monitoring plans must identify the methods used to assess changes in the movements, behavior, and habitat use of polar bear and walrus in response to Industry's activities. Monitoring activities are summarized and reported in a formal report each year. The applicant must submit an annual monitoring and reporting plan at least 90 days prior to the initiation of a proposed exploratory activity, and the applicant must submit a final monitoring report to us no later than 90 days after the completion of the activity. We base each year's monitoring objective on the previous year's monitoring results.

We require an approved plan for monitoring and reporting the effects of oil and gas industry exploration, development, and production activities on polar bear and walrus prior to issuance of an LOA. Since development and production activities are continuous and long-term, upon approval, LOAs and their required monitoring and reporting plans will be issued for the life of the activity or until the expiration of the regulations, whichever occurs first. Each year, prior to January 15, we require that the operator submit development and production activity monitoring results of the previous year's activity. We require approval of the monitoring results for continued operation under the LOA.

Public Comments Solicited

We are opening the comment period on this rule for only 30 days because the previous regulations authorizing the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska expired March 28, 2005.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''Sec.'' and a numbered heading; for example, Sec. 18.123.) When is this subpart effective?

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule?

(6) What else could we do to make the rule easier to understand?

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the

rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state that prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Required Determinations

NEPA Considerations

We have prepared a draft Environmental Assessment (EA) in conjunction with this proposed rulemaking. Subsequent to closure of the comment period for this proposed rule, we will decide whether this is a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969. For a copy of the draft Environmental Assessment, contact the individual identified above in the section **FOR FURTHER INFORMATION CONTACT**.

Regulatory Planning and Review

This document has not been reviewed by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review). This rule will not have an effect of $100 million or more on the economy; will not adversely affect in a material way the economy, productivity, competition, jobs, environment, public health or safety, of State, local, or tribal governments or communities; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not alter the budgetary effects or entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients; and does not raise novel legal or policy issues.

Expenses will be related to, but not necessarily limited to, the development of applications for regulations and LOAs, monitoring, record keeping, and reporting activities conducted during Industry oil and gas operations, development of polar bear interaction plans, and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Compliance with the rule is not expected to result in additional costs to Industry that it has not already been subjected to for the previous 6 years. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the petition for promulgation of regulations (originally developed in 2002) and LOA requests probably does not exceed $500,000 per year, short of the ''major rule'' threshold that would require preparation of a regulatory impact analysis. As is presently the case, profits would accrue to Industry; royalties and taxes would accrue to the Government; and the rule would have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

Small Business Regulatory Enforcement Fairness Act

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

We have also determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations. These potential applicants have not been identified as small businesses. The analysis for this rule is available from the individual identified above in the section **FOR FURTHER INFORMATION CONTACT**.

Taking Implications

This rule is not expected to have a potential takings implication under Executive Order 12630 because it would authorize the nonlethal, incidental, but not intentional, take of polar bear and walrus by oil and gas industry companies and thereby exempt these companies from civil and criminal liability as long as they operate in compliance with the terms of their LOAs.

Federalism Effects

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, Secretarial Order 3225, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have evaluated possible effects on federally recognized Alaska Native tribes. Through the LOA process identified in the regulations, Industry presents a Plan of Cooperation with the Native Communities most likely to be affected and engages these communities in numerous informational meetings.

Civil Justice Reform

The Departmental Solicitor's Office has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The information collection requirements included in this rule are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The OMB control number assigned to these information collection requirements is 1018–0070, which expires on October 31, 2007. This control number covers the information collection requirements in 50 CFR part 18, subpart J, which contains information collection, record keeping, and reporting requirements associated with the development and issuance of specific regulations and LOAs.

Energy Effects

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule provides exceptions from the taking prohibitions of the MMPA for entities engaged in the exploration, development, and production of oil and gas in the Beaufort Sea and adjacent coastal areas of northern Alaska. By providing certainty regarding compliance with the MMPA, this rule will have a positive effect on Industry and its activities. Although the rule requires Industry to take a number of actions, these actions have been undertaken by Industry for many years as part of similar past regulations. Therefore, this rule is not expected to significantly affect energy supplies, distribution, or use and does not constitute a significant energy action. No Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons set forth in the preamble, the Service proposes to amend part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as set forth below.

PART 18—MARINE MAMMALS

1. The authority citation of 50 CFR part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Revise part 18 by adding a new subpart J to read as follows:

Subpart J—Nonlethal Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

Sec.

18.121 What specified activities does this subpart cover?
18.122 In what specified geographic region does this subpart apply?
18.123 When is this subpart effective?
18.124 How do I obtain a Letter of Authorization?
18.125 What criteria does the Service use to evaluate Letter of Authorization requests?
18.126 What does a Letter of Authorization allow?
18.127 What activities are prohibited?
18.128 What are the mitigation, monitoring, and reporting requirements?
18.129 What are the information collection requirements?

§ 18.121 What specified activities does this subpart cover?

Regulations in this subpart apply to the nonlethal incidental, but not intentional, take of small numbers of polar bear and Pacific walrus by you (U.S. citizens as defined in § 18.27(c)) while engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska.

§ 18.122 In what specified geographic region does this subpart apply?

This subpart applies to the specified geographic region defined by a north-south line at Barrow, Alaska, and includes all Alaska coastal areas, State waters, and Outer Continental Shelf waters east of that line to the Canadian border and an area 25 miles inland from Barrow on the west to the Canning River on the east. The Arctic National Wildlife Refuge is not included in the area covered by this subpart. Figure 1 shows the area where this subpart applies.

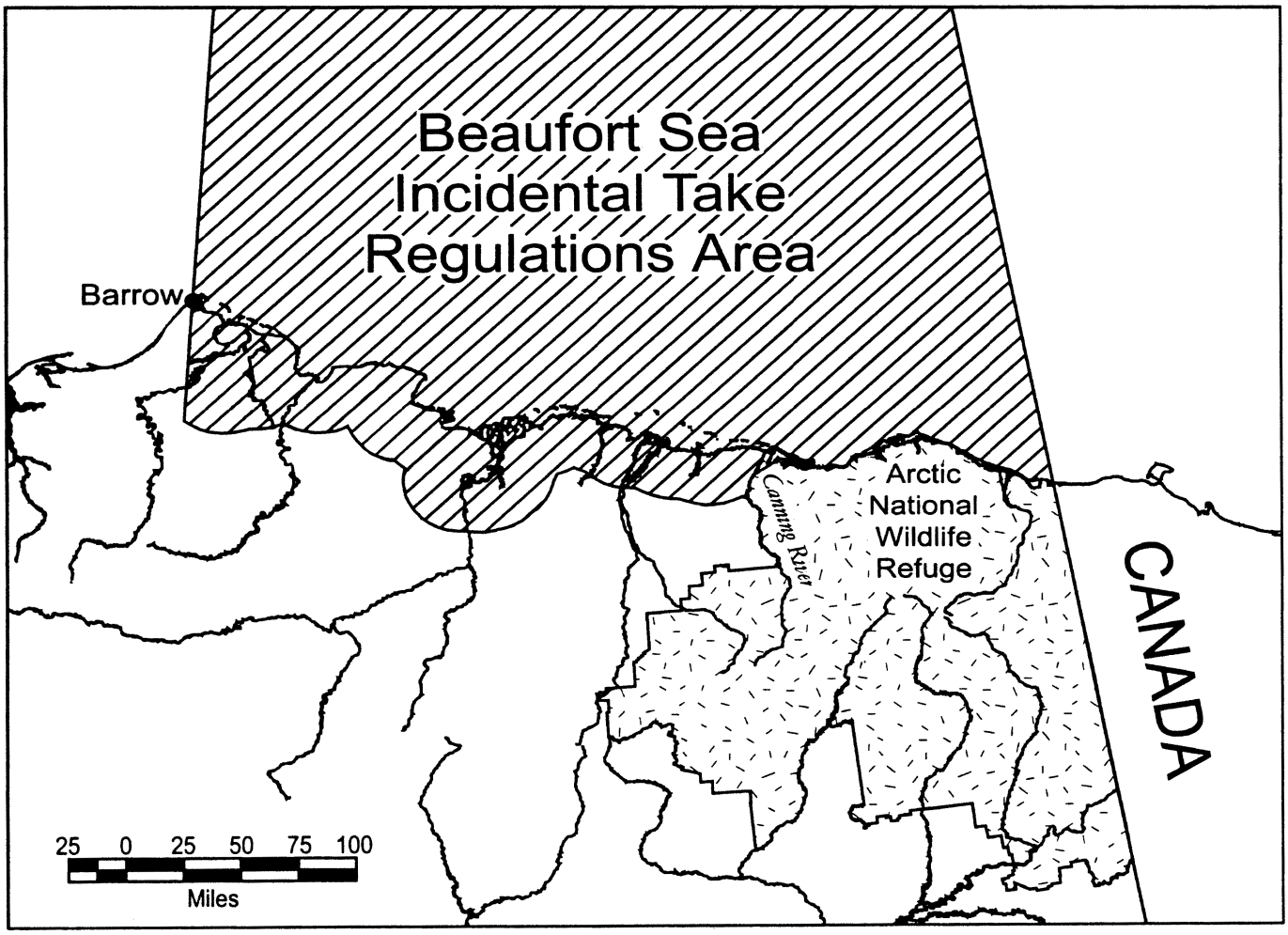


Figure 1. Specific geographic region covered by the Beaufort Sea incidental take regulations.

§ 18.123 When is this subpart effective?

Regulations in this subpart are effective from [effective date of final rule] through [date 5 years from the effective date of the final rule] for year-round oil and gas exploration, development, and production activities.

§ 18.124 How do I obtain a Letter of Authorization?

(a) You must be a U.S. citizen as defined in § 18.27(c).

(b) If you are conducting an oil and gas exploration, development, or production activity in the specified geographic region described in § 18.122 that may cause the taking of polar bear or Pacific walrus in execution of those activities and you want nonlethal incidental take authorization under this rule, you must apply for a Letter of Authorization for each exploration activity or a Letter of Authorization for activities in each development or production area. You must submit the application for authorization to our Alaska Regional Director (see 50 CFR 2.2 for address) at least 90 days prior to the start of the proposed activity.

(c) Your application for a Letter of Authorization must include the following information:

(1) A description of the activity, the dates and duration of the activity, the specific location, and the estimated area affected by that activity.

(2) A site-specific plan to monitor the effects of the activity on the behavior of polar bear and Pacific walrus that may be present during the ongoing activities. Your monitoring program must document the effects to these marine mammals and estimate the actual level and type of take. The monitoring requirements will vary depending on the activity, the location, and the time of year.

(3) A site-specific polar bear awareness and interaction plan.

(4) A Plan of Cooperation to mitigate potential conflicts between the proposed activity and subsistence hunting. This Plan of Cooperation must identify measures to minimize adverse effects on the availability of polar bear and Pacific walrus for subsistence uses if the activity takes place in or near a traditional subsistence hunting area.

§ 18.125 What criteria does the Service use to evaluate Letter of Authorization requests?

(a) We will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographic location. We will determine whether the level of activity identified in the request exceeds that considered by us in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the

availability of the species for take for subsistence uses. If the level of activity is greater, we will reevaluate our findings to determine if those findings continue to be appropriate based on the greater level of activity that you have requested. Depending on the results of the evaluation, we may grant the authorization, add further conditions, or deny the authorization.

(b) In accordance with § 18.27(f)(5), we will make decisions concerning withdrawals of Letters of Authorization, either on an individual or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in paragraph (b) of this section will not apply should we determine that an emergency exists that poses a significant risk to the well-being of the species or stock of polar bear or Pacific walrus.

§ 18.126 What does a Letter of Authorization allow?

(a) Your Letter of Authorization may allow the nonlethal incidental, but not intentional, take of polar bear and Pacific walrus when you are carrying out one or more of the following activities:

(1) Conducting geological and geophysical surveys and associated activities;

(2) Drilling exploratory wells and associated activities;

(3) Developing oil fields and associated activities;

(4) Drilling production wells and performing production support operations;

(5) Conducting environmental monitoring activities associated with exploration, development, and production activities to determine specific impacts of each activity;

(6) Conducting restoration, remediation, demobilization programs and associated activities.

(b) You must use methods and conduct activities identified in your Letter of Authorization in a manner that minimizes to the greatest extent practicable adverse impacts on polar bear and Pacific walrus, their habitat, and on the availability of these marine mammals for subsistence uses.

(c) Each Letter of Authorization will identify conditions or methods that are specific to the activity and location.

§ 18.127 What activities are prohibited?

(a) Intentional take and lethal incidental take of polar bear or Pacific walrus; and

(b) Any take that fails to comply with this part or with the terms and conditions of your Letter of Authorization.

§ 18.128 What are the mitigation, monitoring, and reporting requirements?

(a) We require holders of Letters of Authorization to cooperate with us and other designated Federal, State, and local agencies to monitor the impacts of oil and gas exploration, development, and production activities on polar bear and Pacific walrus.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe, record, and report on the effects of their activities on polar bear and Pacific walrus.

(c) Holders of Letters of Authorization are required to have a polar bear interaction plan on file with the Service, and polar bear awareness training will also be required of certain personnel.

(d) Under a Plan of Cooperation, Industry must contact affected subsistence communities to discuss potential conflicts caused by location, timing, and methods of proposed operations. Industry must make reasonable efforts to ensure that activities do not interfere with subsistence hunting and that adverse effects on the availability of polar bear or Pacific walrus are minimized.

(e) We may place an observer on the site of the activity or on board drill ships, drill rigs, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of your activity on polar bear and Pacific walrus.

(f) If known occupied dens are located within an operator's area of activity, we will require a 1-mile exclusion buffer around the den to limit disturbance or require that the operator conduct activities after the female bears emerge from their dens. We will review these requirements for extenuating circumstances on a case-by-case basis.

(g) Industry may also be required to use Forward Looking Infrared (FLIR) imagery, scent-trained dogs, or both to determine presence or absence of polar bear dens in areas of activity.

(h) A map of potential coastal polar bear denning habitat can be found at: *http://www.absc.usgs.gov/research/sis_summaries/polar_bears_sis/mapping_dens.htm.* This map is available to Industry to ensure that the location of potential polar bear dens is considered when conducting activities in the coastal areas of the Beaufort Sea.

(i) For exploratory activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director within 90 days after completion of activities. For development and production activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director by January 15 for the preceding year's activities. Reports must include, at a minimum, the following information:

(1) Dates and times of activity;

(2) Dates and locations of polar bear or Pacific walrus activity as related to the monitoring activity; and

(3) Results of the monitoring activities, including an estimated level of take.

§ 18.129 What are the information collection requirements?

(a) The collection of information contained in this subpart has been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070. We need to collect the information in order to describe the proposed activity and estimate the impacts of potential taking by all persons conducting the activity. We will use the information to evaluate the application and determine whether to issue specific Letters of Authorization.

(b) For the duration of this rule, when you conduct operations under this rule, we estimate an 8-hour burden per Letter of Authorization, a 12-hour burden for monitoring, and an 8-hour burden per monitoring report. You must respond to this information collection request to obtain a benefit pursuant to section 101(a)(5) of the Marine Mammal Protection Act (MMPA). You should direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 222 ARLSQ, 1849 C Street, NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project (1018–0070), Washington, DC 20503.

Dated: February 23, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–2784 Filed 3–21–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060315071–6071–01; I.D. 030906C]

RIN 0648–AT22

Fisheries of the Northeastern United States; Monkfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to establish target total allowable catch (TAC) levels for the monkfish fishery for the 2006 fishing year (FY), adjust trip limits, and establish days-at-sea (DAS) restrictions for limited access monkfish vessels fishing in the Southern Fishery Management Area (SFMA) based upon the annual target TAC setting, trip limit, and DAS adjustment methods established in Framework Adjustment 2 (Framework 2) to the Monkfish Fishery Management Plan (FMP). The proposed action is necessary to comply with the rebuilding plan established in the FMP and modified in Framework 2. The intent of this action is to help eliminate overfishing and rebuild the monkfish resource in accordance with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements.

DATES: Comments must be received by 5 p.m. on April 3, 2006.

ADDRESSES: Written comments on the proposed rule may be submitted by any of the following methods:

- E-mail: E-mail comments may be submitted to *2006monkTACs@noaa.gov*. Include in the subject line the following ''Comments on the Proposed Rule for the 2005 Monkfish Annual Adjustment.''
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Mail: Comments submitted by mail should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope ''Comments on the Proposed Rule for the 2006 Monkfish Annual Adjustment.''
- Facsimile (fax): Comments submitted by fax should be faxed to (978) 281–9135.

Copies of the Environmental Assessment (EA), including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), prepared for this action are available upon request from Paul Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA, 01950. The document is also available online at *www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, e-mail *Allison.Ferreira@noaa.gov*, phone (978) 281–9103, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC), with the NEFMC having the administrative lead. Framework 2 to the FMP, which became effective on May 1, 2003 (68 FR 22325; April 28, 2003), implemented a method to set the annual target TAC. This method is based upon the relationship between the 3–year running average of NMFS's fall trawl survey biomass index (3–year average biomass index) and established annual biomass index targets (annual index target). The annual index targets are based on 10 equal increments between the 1999 biomass index (the start of the rebuilding program) and the biomass target (Btarget), which is to be achieved by 2009 according the rebuilding plan established in the FMP. According to this target TAC setting method, annual target TACs are set based on the ratio of the current 3–year average biomass index to the annual index target applied to the monkfish landings for the previous complete fishing year (e.g., FY 2004). This rebuilding program, established in Framework 2, is based on established formulas for calculating TACs, trip limits, and DAS allocations.

The Monkfish Monitoring Committee reviewed the fall trawl survey biomass indices and monkfish landings for FY 2004, and calculated the target TACs for FY 2006 in accordance with the procedures established in Framework 2. According to these procedures, if the current 3–year average biomass index is below the annual index target, then the target TAC for the upcoming fishing year (e.g., FY 2006) is set equivalent to the monkfish landings for the previous fishing year (e.g., FY 2004), minus the percentage difference between the 3–year average biomass index and the annual index target. Based on the information presented in Table 1, the current 3–year average biomass indices are less than the current targets for both management areas. Therefore, the proposed FY 2006 target TAC for the Northern Fishery Management Area (NFMA) is 7,737 mt (33.7 percent less than FY 2004 landings), and the proposed FY 2006 target TAC for the SFMA is 3,667 mt (39.7 percent less than FY 2004 landings).

TABLE 1. CALCULATION OF 2006 TARGET TACS.

Management Area	FY 2004 Landings (mt)	2005 3-year Average (kg/tow)	2005 Biomass Target (kg/tow)	Percent Below Target	2006 Target TAC (mt)
NFMA	11,666	1.214	1.83	33.7 %	7,737
SFMA	6,078	0.778	1.29	39.7 %	3,667

This action does not propose any changes to the management measures for limited access monkfish vessels fishing in the NFMA because the annual adjustment procedure specified in the regulations applies only to the SFMA. At the time Framework 2 was developed and implemented, the monkfish resource was well above the Bthreshold established for the NFMA. However, recent restrictions on fishing effort in the Northeast multispecies fishery, implemented through Amendment 13 to the Northeast Multispecies FMP, have helped constrain monkfish effort in the NFMA. In fact, monkfish landings during FY 2004 were only 69 percent of the FY 2004 target TAC for that management area. Furthermore, proposed additional effort restrictions in the Northeast multispecies fishery to be implemented during FY 2006 (through the emergency Secretarial action and joint Northeast Multispecies Framework 42/Monkfish Framework 3) are expected to further constrain monkfish landings.

Framework 2 established a procedure for the SFMA that requires either the DAS or the trip limits to be adjusted based on whether the target TAC is less than or greater than 8,000 mt (the approximate target TAC level that would result in the 550 and 450 lb (249 and 204 kg, respectively) tail weight trip limits). Since this action proposes a target TAC for the SFMA that is well below 8,000 mt, this action would reduce the trip limits for vessels fishing in the SFMA to 550 lb (249 kg) tail

weight per DAS for limited access Category A, C, and G vessels, and 450 lb (204 kg) tail weight per DAS for limited access Category B, D, and H vessels, and also restrict the FY 2006 DAS available for monkfish limited access vessels fishing in the SFMA to 12 monkfish DAS (plus up to 10 carryover DAS). The number of DAS available to limited access monkfish vessels fishing in the SFMA during FY 2006 was calculated using the analysis procedures established in Framework 2 and outlined in the regulations at § 648.96(b)(3).

This action would also notify limited access monkfish vessels of the monkfish DAS proration for vessels participating in the Offshore Fishery Program in the SFMA. The Offshore Fishery Program, which was established through Amendment 2 to the FMP (70 FR 21927; April 28, 2005), authorizes limited access monkfish permit holders with Category A, B, C, or D permits to elect, on an annual basis, to participate in a designated offshore monkfish fishery in the SFMA by obtaining a Category F permit for the fishing year. Under this program, participants are allowed a higher daily possession limit of 1,600 lb (726 kg) of monkfish tails per DAS in exchange for a reduced monkfish DAS allocation. DAS allocations for Category F vessels are reduced proportionally from the DAS allocated to Category A, B, C, and D permits, according to the ratio of the SFMA trip limit that would otherwise be in effect for that permit category to the 1,600 lb (726 kg) Category F permit trip limit. For example, in FY 2006, and assuming no carryover DAS, Category A and C permit holders who elect to switch to a Category F permit would be authorized to fish 4.1 DAS, and Category B and D permit holders would be authorized to fish 3.4 DAS. Any carryover DAS available to the permit holder would be factored into the proration and would affect the number of DAS authorized.

Classification

NMFS has determined that the proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The NEFMC prepared an IRFA as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this preamble and in the **SUMMARY**. A summary of the analysis follows:

The FMP requires that the status of the monkfish resource be reviewed on an annual basis. In addition, the measures contained in Framework 2 established an annual target TAC setting method that is based on the most recent 3–year running average of the NMFS fall trawl survey biomass index as compared to an established annual index target. Framework 2 also established a method for adjusting trip limits and DAS, as necessary, for vessels fishing in the SFMA in order to achieve the target TAC for that area. This action utilizes the target TAC setting and trip limit and DAS adjustment methods implemented in Framework 2 to establish target TACs, trip limits, and DAS restrictions for FY 2006.

The regulations implementing the FMP, found at 50 CFR part 648, subpart F, authorize adjustment of the management measures as needed in order to achieve the goals of the FMP. Framework 2 adjusted FMP management measures by establishing a streamlined process for setting annual target TACs, and for adjusting trip limits and DAS allocations, as needed, to achieve those target TACs. The objective of this action is to achieve the goals of the FMP through the application of the target TAC setting method established in Framework 2 for FY 2006.

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses ($3.5 million in gross sales). Therefore, there is no disproportionate impact on small entities compared to large entities. Currently, there are approximately 741 limited access monkfish permit holders and approximately 2,263 vessels holding an open access monkfish permit. This action would affect only limited access monkfish vessels while fishing for monkfish in the SFMA, since no changes to the management measures for the NFMA are proposed. Based on activity reports for FY 2004 (the most recent fishing year for which complete information is available), there were 491 limited access permit holders participating in the monkfish fishery. Of these, 151 vessels fished for monkfish exclusively in the SFMA, while 171 vessels fished for monkfish in both management areas. Thus, the proposed measures would likely affect at least the 325 vessels that fished for monkfish for at least part of the fishing year in the SFMA, but would likely have the greatest effect on the 151 vessels that fished for monkfish exclusively in the SFMA.

The combined target TAC for both management areas would be decreased by approximately 50 percent compared to FY 2005. Individually, the target TAC for the NFMA would be reduced by 41 percent, while the target TAC for the SFMA would be reduced by 62 percent. In addition, monkfish trip limits in the SFMA would be reduced by approximately 25 percent and DAS would be reduced by nearly 70 percent. Thus, the proposed measures would have differential impacts on participating vessels depending on the management area in which they fish.

A trip limit model was used to estimate the impact of the proposed SFMA trip limits on the average per trip return for vessels on monkfish trips. Based on this analysis, on average, a trip taken in the SFMA would produce 16.9 percent less income towards fixed costs, debt, and owner profit under the proposed trip limits and DAS restrictions for FY 2006 as compared to FY 2005 trip limits and DAS. In addition, net pay per crew member would decrease by an average of 17.1 percent per trip.

As previously stated, vessels fishing in the NFMA would not be affected by the proposed measures for the SFMA. The average impact on vessels fishing in both management areas is estimated to be approximately a 2–percent decrease in both net pay to crew and net return to the vessel, though average decreases for NJ vessels would be more than 10 percent. The average impact on vessels fishing exclusively in the SFMA is estimated to be a 34.3–percent decrease in net pay to the crew, and a 31.8–percent decrease in returns to the vessel owner. These effects vary greatly between states, with vessels from NC experiencing smaller decreases relative to vessels from MA and NJ, where average decreases range from 40 to 50 percent.

The annual target TAC setting method established in Framework 2 is based on a formula that integrates an annual biomass index target with the 3–year running average of the NMFS fall trawl survey and the monkfish landings for the previous fishing year. The FY 2006 target TACs result from the application of this methodology. As a result, there are no other reasonable alternatives to the proposed action to establish target TACs of 7,737 mt for the NFMA and 3,667 mt for the SFMA, other than no action, that meet the requirements of the Magnuson-Stevens Act, the FMP, and implementing regulations. Furthermore, Framework 2 also established an formulaic method for adjusting trip

limits and DAS for the SFMA that is based on the distribution of monkfish landings and DAS used by limited access vessels. The proposed trip limits of 550 lb (249 kg) per DAS for limited access Category A, C, and G vessels, and 450 lb (204 kg) per DAS for limited access Category B, D, and H vessels, and the calculated DAS limitation of 12 monkfish DAS that would be applicable to limited access monkfish vessels fishing in the SFMA are the result if the application of this formula.

This proposed rule does not duplicate, overlap or conflict with other Federal rules, and does not contain new reporting or recordkeeping requirements.

A copy of this analysis is available from the NEFMC (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 16, 2006.

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 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.92, paragraph (b)(1)(ii) is added to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(1) * * *

(ii) *FY 2006 DAS restrictions for vessels fishing in the SFMA.* For the 2006 fishing year, limited access monkfish vessels are restricted to utilizing only 12 of their 40 monkfish DAS allocation in the SFMA. If a vessel does not possess a valid letter of authorization from the Regional Administrator to fish in the NFMA as described in § 648.94(f), NMFS will presume that any monkfish DAS used was fished in the SFMA.

* * * * *

3. In § 648.94, paragraphs (b)(2)(i) and (ii) are revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(2) * * *

(i) *Category A, C, and G vessels.* Category A, C, and G vessels fishing under the monkfish DAS program in the SFMA may land up to 550 lb (249 kg) tail weight or 1,826 lb (828 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32), unless modified pursuant to § 648.96(b)(2)(ii).

(ii) *Category B and D vessels.* Category B, D, and H vessels fishing under the monkfish DAS program in the SFMA may land up to 450 lb (204 kg) tail weight or 1,494 lb (678 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail weight to whole weight of 3.32), unless modified pursuant to § 648.96(b)(2)(ii).

* * * * *

[FR Doc. E6–4158 Filed 3–21–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060223050–6050–01; I.D. 013006I]

RIN 0648–AT09

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish, Crab, Salmon, and Scallop Fisheries of the Bering Sea and Aleutian Islands Management Area and Gulf of Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendments 78 and 65 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI), Amendments 73 and 65 to the FMP for Groundfish of the Gulf of Alaska (GOA), Amendments 16 and 12 to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs, Amendments 7 and 9 to the FMP for the Scallop Fishery Off Alaska, and Amendments 7 and 8 to the FMP for Salmon Fisheries in the Exclusive Economic Zone off the Coast of Alaska. These amendments, if approved, would revise the FMPs by identifying and describing essential fish habitat (EFH), designating habitat areas of particular concern (HAPCs), and including measures to minimize to the extent practicable adverse effects on EFH. This action is necessary to update the descriptions of EFH in the FMPs based on the best available scientific information and to protect those areas that have important habitat features for the sustainability of managed fish stocks.

DATES: Written comments must be received by May 8, 2006.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Records Officer. Comments may be submitted by:

- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Hand delivery:* 709 West 9th Street, Room 420A, Juneau, AK.
- *Fax:* 907–586–7557.
- *E-mail: EFH-HAPC-PR-0648-AT09@noaa.gov*. Include in the subject line the following document identifier: EFH–HAPC PR. E-mail comments, with or without attachments, are limited to 5 megabytes.
- *Webform at the Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions at that site for submitting comments.

Copies of the maps of EFH and HAPC management areas, the Environmental Impact Statement (EIS) for EFH, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for HAPCs may be obtained from the addresses stated above or from the Alaska Region NMFS Web site at *http://www.fakr.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Alaska Region, and to the Office of Management and Budget by e-mail to *David_Rostker@omb.eop.gov,* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or e-mail at *melanie.brown@noaa.gov.*

SUPPLEMENTARY INFORMATION: The groundfish, crab, scallop, and salmon fisheries in the exclusive economic zone (EEZ) off Alaska are managed under their respective FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations implementing the FMPs appear at 50 CFR parts 679 and 680. General regulations governing

U.S. fisheries also appear at 50 CFR part 600.

The Council has submitted the amendments for EFH and HAPC provisions for review by the Secretary of Commerce, and a Notice of Availability of the amendments was published in the **Federal Register** on February 6, 2006 (71 FR 6031), with comments on the amendments invited through April 7, 2006. Comments may address the FMP amendments, the proposed rule, or both, but must be received by April 7, 2006, to be considered in the approval/disapproval decision on the FMP amendments. All comments received by that time, whether specifically directed to the FMP amendments or to the proposed rule, will be considered in the approval/disapproval decision on the FMP amendments.

Background

Section 303(a)(7) of the Magnuson-Stevens Act requires that each FMP describe and identify EFH, minimize to the extent practicable the adverse effects of fishing on EFH, and identify other measures to promote the conservation and enhancement of EFH. The Council amended its five FMPs in 1998 to address the EFH requirements of the Magnuson-Stevens Act. The Secretary of Commerce, acting through NMFS, approved the Council's EFH FMP amendments in January 1999. In the spring of 1999, a coalition of seven environmental groups and two fishermen's associations filed suit in the United States District Court for the District of Columbia challenging NMFS' approval of EFH FMP amendments prepared by the Gulf of Mexico, Caribbean, New England, North Pacific, and Pacific Fishery Management Councils (*American Oceans Campaign (AOC) et al.* v. *Daley et al.,* Civil Action No. 99–982–GK). The focus of the *AOC* v. *Daley* litigation was whether NMFS and the Councils had adequately evaluated the effects of fishing on EFH and taken appropriate measures to mitigate adverse effects. In September 2000, the court upheld NMFS' approval of the EFH FMP amendments under the Magnuson-Stevens Act, but ruled that the EAs prepared for the amendments violated the National Environmental Policy Act (NEPA). The court ordered NMFS to complete new and thorough NEPA analyses for each EFH FMP amendment in question.

NMFS, Alaska Region, and the Council completed an EIS pursuant to the court order. Under the terms of a joint stipulation and court order, the Record of Decision for the EIS had to be completed by August 13, 2005, and any implementing regulations must be approved by August 13, 2006. The final EFH EIS was filed with the U.S. Environmental Protection Agency on April 25, 2005, and a notice of availability was published on May 6, 2005, (70 FR 24037). The Record of Decision was approved on August 8, 2005. The joint stipulation and court order also require NMFS and the Council to consider the identification of specific HAPCs and associated management measures, with any regulations promulgated by August 13, 2006.

The Council adopted the new EFH and HAPC amendments in February 2005 and provided further recommendations in June 2005. If approved by NMFS, these amendments would revise the FMPs by updating the description and identification of EFH, changing the identification of HAPCs, and authorizing protection measures for EFH and HAPCs. Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if evidence suggests that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature. The EIS determined that the effects of fishing activities on EFH are minimal, although some effects are persistent rather than temporary. Therefore, protection measures for the fisheries to reduce the adverse effects on EFH are not required by § 600.815. Regardless, the Council recommended precautionary measures to provide protection to EFH and HAPCs from the effects of fishing activities. This action would continue the Council's policy of implementing precautionary conservation measures for the Alaska fisheries, as described in the management policies and objectives added to the groundfish FMPs in 2004 (69 FR 31091, June 2, 2004).

The Council developed alternatives for the EIS analysis using an extensive public process that involved guidance from NMFS, a formal public scoping period, 15 EFH Committee meetings and work sessions, and numerous meetings of the Council and its Advisory Panel and its Scientific and Statistical Committee. HAPCs were identified through a Council process that included members of the Council's FMP Plan Teams, NMFS, fishing industry representatives, State of Alaska, university representatives, and environmental organizations. The proposals were reviewed and ranked by the review teams against criteria established by the Council for the consideration of HAPC proposals. The Council's identification and description of EFH, selection of HAPCs, and adoption of new management measures, as proposed under this action, resulted from this public process, including consideration of the best available science. A detailed description of the process for developing the EFH alternatives is in section 2.2.3 of the EIS (see **ADDRESSES**). Details of the HAPC selection process are in Appendix B of the EA/RIR/IRFA for HAPC (see **ADDRESSES**).

Several gear types used in the Alaska fisheries have been identified as likely to disturb bottom habitat (although not at a level that was determined to be more than minimal) and would be restricted by this action to protect EFH and HAPCs. These gear types include pot, hook-and-line, dredge, dinglebar troll, and nonpelagic trawl gears. Detailed descriptions of fishing gear and the impacts on bottom habitat are in the EFH EIS and in the EA/RIR/IRFA for HAPCs (see **ADDRESSES**).

Dinglebar troll gear is used in the State of Alaska lingcod troll fishery in the GOA. Dinglebar troll gear consists of a single line that is retrieved and set with a power or hand-troll gurdy, with a terminally attached weight (dinglebar), from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is underway. The dinglebar, usually made of a heavy metal such as iron, is used in nearly continuous contact with the bottom, and therefore, is likely to disturb bottom habitat.

Pot gear is used in the crab and groundfish fisheries that occur on the ocean bottom. Pots may be from 6 feet to 8 feet (1.8 m to 2.4 m) square and can weigh several hundred pounds. Hook-and-line gear also is used in the groundfish fisheries for species that occur on the ocean bottom. This gear consists of a groundline employed with gangions spaced several feet apart with hooks and may be up to several miles long. Sets are weighted to minimize movement of the groundline on the sea floor. Sets are anchored at each end with an anchor weighing 30 pounds to 60 pounds (13.6 kilograms to 27.3 kilograms). Gear components that contact the bottom include the anchors, groundlines, intermediate weights, gangions, and hooks. Pot and hook-and-line gear may disturb bottom habitat during deployment and retrieval of the gear.

Dredge gear is used to harvest scallops and consists of a heavy-framed device with an attached holding bag which is towed along the surface of the seabed. When fishing properly, the dredge shoes, ring bag, and club stick maintain contact with the seabed. Nonpelagic trawl gear is used in the groundfish

fisheries for species occurring at or near the ocean bottom. This gear is designed to be used in contact with the bottom. Contact with the seafloor may occur by several parts of the trawl, including doors, sweeps, and footropes. Because dredge and nonpelagic trawl are mobile gear used in contact with the bottom, these gear types are most likely to disturb larger areas of bottom habitat compared to other gear types used in Alaska fisheries.

Pelagic trawl gear also has been known to contact the bottom and may have impacts on bottom habitat. This gear type is primarily used for the harvest of pollock and typically does not contact the bottom as aggressively as a bottom trawl. Contact with the seafloor, when it occurs, is typically from the footrope as well as from the weight chains attached to portions of the trawl. The use of pelagic trawl gear for directed fishing for pollock in the GOA and BSAI must meet the trawl performance standard which states that no more than 20 crabs of 1.5 inches (38 mm) or larger may be on the vessel at any time (§ 679.7(a)(14)). This standard was intended to reduce halibut and crab incidental catch in the pollock fishery by ensuring the pelagic trawl gear is operated in a manner that is less likely to contact the bottom (58 FR 17196, April 1, 1993). In the GOA, the footrope of a pelagic trawl may not contact the seabed for more than 10 percent of the period of any tow (§ 679.24(b)(3)). This gear limitation reduces the potential impact of pelagic trawl gear on the seabed in the GOA. Under this proposed rule, pelagic trawl gear used for directed fishing for pollock would be allowed in the EFH and HAPC management areas described below only in an off-bottom mode based on the trawl performance standard and within the gear limitation in the GOA.

Summary of Proposed Management Measures

The amendments specify EFH and HAPC provisions for each FMP. These provisions include management measures that close areas to certain fishing gear activities. The closures would apply to all federally permitted vessels with the specified gear type. Federally permitted vessels are those named on either a Federal fisheries permit (FFP) or a Federal crab vessel permit (FCVP) that operate within the EEZ or State of Alaska waters. NMFS is concerned that vessels licensed by the State of Alaska that are participating in fisheries for non-FMP managed species within the EEZ (*e.g.*, the lingcod fishery managed by the State of Alaska) may impact these closed areas. Under the current proposed rule, vessels licensed by the State of Alaska would not be subject to the closures unless they were also federally permitted vessels. Existing federal regulations for fishing within the EEZ off Alaska do not require vessels to be federally permitted unless such vessels retain FMP managed species. The preferred solution to this concern is for the State of Alaska to adopt similar restrictions to those found in this proposed rule that would apply to vessels licensed by the State of Alaska. In 2006, the Council is scheduled to work with the State of Alaska Board of Fisheries to develop state protection measures for EFH. If the preferred solution does not fully address the concern, NMFS will explore other options with the Council and the State of Alaska.

The following discussion summarizes the amendments for EFH and HAPC provisions of the FMPs and the regulatory amendments that would be needed to implement the FMP amendments. Maps of the proposed EFH and HAPC management areas described below are available from NMFS (see **ADDRESSES**).

The Council recommended three actions for EFH. The first two actions do not require the promulgation of implementing regulations. Action 1 would revise the description and identification of EFH in the FMPs using new information and improved mapping. This action would ensure that the best scientific information available is used to describe and identify EFH in the FMPs, as required by § 600.815(a)(1)(ii)(B). Action 2 would adopt an approach for identifying HAPCs. The FMP amendments would rescind existing HAPCs and add a procedure for identifying HAPCs based on specific sites within EFH that are necessary to address particular habitat concerns.

Action 3 would require a regulatory amendment to establish several types of management areas to provide protection from the adverse effects of fishing on EFH. These management areas are located in the Aleutian Islands subarea and in the GOA. Many of these areas include State waters. NMFS and the Council intend to coordinate with the State to encourage complementary protection of sensitive habitat in near shore waters.

The Aleutian Islands Habitat Conservation Area (AIHCA) encompasses the entire Aleutian Islands subarea except for specified areas that have supported the highest groundfish catches in the past. This area would encompass 279,454 nm^2 and would be closed to fishing for all federally permitted vessels using nonpelagic trawl gear. The closures would prevent the expansion of nonpelagic trawling into relatively undisturbed habitats while allowing most major fishing areas to remain open. Areas with historically high catches of target species would be designated as areas open to nonpelagic trawl gear fishing. The shapes of these areas are based on fisheries observer data, fishing industry catch data, the average duration and distance during a single deployment of nonpelagic trawl gear, and the needs for clear boundaries to be delineated using straight lines and oriented to latitude and longitude where possible. Some boundaries include locations between coordinate points at the low mean tide level along the shoreline, which are further explained in a new Table 24 to 50 CFR part 679 in the proposed rule. The proposed coordinates and connecting lines can be applied to NOAA nautical charts to ensure fishermen and enforcement personnel can easily identify restriction areas.

The Council determined that the AIHCA would provide a balance between continued fishing in the Aleutian Islands subarea and protection of sensitive habitats, such as cold water corals. This closure also would include habitat areas that are not identified as EFH at this time. Specifically, the AIHCA includes habitat areas that extend beyond the limits of EFH for groundfish, crabs, and scallops. The Council has identified the water column in all of these areas as EFH for marine salmon, but the bottom habitats have not been well surveyed and therefore are not considered EFH. The Council developed the AIHCA primarily to address potential effects on EFH, but the analysis also indicated a potential for adverse effects to habitats that support managed species in areas outside of EFH. The Council had incomplete information regarding habitat functions in these areas, but based on the best scientific information available, these areas include corals and other sensitive habitat types that may be important to managed species. Such habitats are susceptible to harm from nonpelagic trawl gear and may take a long time to recover following disturbance. The Council therefore decided that the AIHCA should include areas outside of EFH. The Council recommended the AIHCA and the other new closures in this proposed rule as precautionary measures to preclude damage to habitats that may be important for Council managed species.

The EFH amendments also would establish six Aleutian Islands Coral Habitat Protection Areas (AICHPAs) that

would be closed to anchoring by all federally permitted vessels and closed to fishing with bottom contact gear by federally permitted vessels. Bottom contact gear includes nonpelagic trawl, hook-and-line, pot, dredge, and dinglebar. The definition for each of these gear types, except dredge, is located in § 679.2 under authorized gear. The AICHPAs are located off Semispochnoi Island, Bobrof Island, Cape Moffet, Great Sitkin Island, Ulak Island, and Adak Canyon, totaling 110 nm². These areas were recommended for this level of protection by NMFS, industry, and environmental organizations during the HAPC identification process. The delineation of each specific area was adopted by the Council to provide protection to discrete coral garden habitat areas. The boundaries are straight lines oriented to latitude and longitude for easy location on NOAA nautical charts and to facilitate compliance, monitoring, and enforcement. Bottom contact gear and anchoring restrictions for these areas are needed because they contain especially diverse and fragile living habitat structures that are particularly sensitive to the impacts of bottom contact gear and anchoring, and have long recovery times once damaged. The Council determined that a higher level of protection is appropriate for these unique habitats.

In the GOA, the EFH amendments would establish ten GOA Slope Habitat Conservation Areas (GOASHCAs) where fishing for groundfish by federally permitted vessels with nonpelagic trawl gear would be prohibited. These areas, encompassing 2,112 nm² on the upper to intermediate slope where depths are from 200 m to 1,000 m, were identified based on the likely occurrence of high relief corals and rockfish in lightly fished areas. The EIS analysis indicated that nonpelagic trawl gear has the largest impact on this habitat. Therefore, nonpelagic trawls would be restricted in these areas. The shapes of the areas were developed in the same manner as described above for AICHPA. The proposed restriction on the use of nonpelagic trawl gear in these areas would provide refuge for rockfish and other managed species and long term protection for corals.

The Council also recommended three actions to identify and manage HAPCs within EFH that require regulatory amendments. Action 1 would identify fifteen Alaska Seamount Habitat Protection Areas (ASHPAs) where anchoring by all federally permitted vessels would be prohibited and fishing with bottom contact gear by a federally permitted vessel would be prohibited. Fourteen of these areas are located in the GOA and one is located in the Aleutian Islands subarea at Bowers Seamount. In total, they encompass 5,329 nm². These areas were identified for this level of protection by NMFS, industry, and environmental organizations during the HAPC identification process. The specific areas delineated would protect the seamount habitat features. The boundaries are straight lines oriented to latitude and longitude to facilitate locating them on NOAA nautical charts. Bottom contact gear and anchoring restrictions for these areas are needed because the areas contain especially diverse and fragile living habitat structures that are particularly sensitive to the impacts of bottom contact gear and anchoring, and have long recovery times once damaged. Seamounts provide unique oceanographic and living habitat features that are important habitat for fish.

HAPC Action 2 would establish the GOA Coral Habitat Protection Areas (GOACHPAs) where all federally permitted vessels would be prohibited from anchoring and from fishing with bottom contact gear. Four of these areas are located on the Fairweather Grounds and one is located off Cape Ommaney, totaling 13.5 nm². Dense thickets of *Primnoa sp.* coral have been identified in these areas by NMFS and the Alaska Department of Fish and Game during survey work using submersible dives. These living habitat structures grow very slowly, are sensitive to disturbance by any bottom contact gear and anchoring, and have long recovery times. Restricting bottom contact gear and anchoring would ensure the living structures would be protected from fishing activities that may adversely impact the habitat.

Action 3 would designate the Bowers Ridge Habitat Conservation Zone (BRHCZ) as a HAPC located in the BSAI. This zone would contain two areas enclosing Bowers Ridge and Ulm Plateau, totaling 5,286 nm². The BRHCZ would be located primarily in the Aleutian Islands subarea with the northern edge of each area overlapping into the Bering Sea subarea. The boundaries of these areas are based on industry and environmental group proposals for protection of these areas. The areas encompass most of the waters of Bowers Ridge where fishing may occur. The proposed rule would prohibit all federally permitted vessels from fishing with mobile bottom contact gear (nonpelagic trawl, dredge, and dinglebar troll gears) in this area. The Council recommended limiting the fishing prohibition for the BRHCZ to mobile bottom contact gear until more research can be done in this zone to determine if additional restrictions would be appropriate for fixed gear fisheries. The mobile bottom contact gear prohibition would provide precautionary management for Bowers Ridge and the Ulm Plateau based on the limited information available for the zone.

Tracking the location of fishing vessels by vessel monitoring systems (VMSs) would facilitate enforcement of the EFH and HAPC management measures. Many of the proposed fishing restrictions involve relatively small areas dispersed over a large section of the EEZ, making surveillance by enforcement vessels or aviation patrols difficult with existing resources. In February 2005, the Council recommended that all federally permitted fishing vessels operating in the Aleutian Islands subarea be required to operate a VMS. In June 2005, the Council expanded this requirement to all federally permitted vessels operating in the GOA with mobile bottom contact gear on board. The Council further requested NMFS to develop a separate comprehensive analysis on broader application of VMS requirements to all vessels under federal jurisdiction to address safety, management, and enforcement objectives.

NMFS received comments on the final EIS from the Alaska Longline Fishermen's Association (representing approximately 65 members, most of whom fish from vessels less than 60 feet (18.3 m) in length overall (LOA)) strongly opposing a VMS requirement for fixed gear vessels due to the cost and the perceived lack of need for VMS to protect sensitive habitat features. Mobile bottom contact fishing gears have the greatest potential for adverse effects on sensitive sea floor habitat features such as those contained in the GOASHCA, ASHPA, and GOACHPA. Although trawling is currently prohibited in the eastern GOA, including all of the proposed GOACHPA (§ 679.7(b)(1)), trawling is currently allowed in most areas that would be the ASHPA and the GOASHCA. VMS operation would facilitate enforcement for bottom trawl vessels in these proposed areas. In response to the EIS comments and the Council's June 2005 recommendation, the proposed rule would exempt fixed gear vessels from the VMS requirements in the GOA. NMFS agrees with the Council that a separate comprehensive analysis of options for broader application of VMS to meet multiple objectives would be an appropriate means to evaluate associated costs and benefits. Many vessels operating in the

Aleutian Islands subarea and the GOA participate in crab, pollock, Pacific cod, or Atka mackerel fisheries that require the use of a VMS pursuant to the Steller sea lion protection measures (68 FR 204, January 2, 2003) and crab fishery regulations (70 FR 10174, March 2, 2005). The provision that would require expanded use of VMS in the GOA and Aleutian Islands subarea would have associated costs. The EIS analysis of this provision does not indicate to NMFS that costs of VMS are prohibitive. However, the placement of a VMS on small vessels does impose costs because of the limited space, the potential need for upgrading the electrical system to allow for the VMS operation, the daily cost of operation, and the total cost of the VMS requirement in relation to the income generated by fishing with a very small vessel.

NMFS specifically seeks public comment on the VMS requirements of this proposed rule. NMFS has analyzed alternatives for VMS requirements in the GOA that would further reduce costs for small vessels, as further explained in the Classification section of this preamble. Public comments are requested on (1) the need for VMSs for all vessels in the Aleutian Islands subarea, and (2) the need for VMSs for all vessels operating with mobile bottom contact gear in the GOA. Public comment could provide additional information to NMFS to decide if less comprehensive VMS coverage in the Aleutian Islands subarea and GOA could maintain management and enforcement capabilities while reducing burdens on fishery participants.

The proposed rule would add a definition of ''operate a vessel'' for the purposes of the VMS requirement to include any time a vessel is offloading or processing fish; is in transit to, from, or between the fishing areas; or is fishing or conducting operations in support of fishing. This definition would allow the tracking of a vessel by its VMS transmission at those times when the vessel is conducting fishing activities in or near an EFH or HAPC management area, or is capable of conducting such activities in the near future.

Proposed Regulatory Amendments

A description of the proposed regulatory amendments that would be required to implement provisions for EFH and HAPC management follows.

Section 679.2 Definitions

The proposed rule would revise the definition of authorized fishing gear to add dredge gear. This definition would be necessary to establish restrictions on this gear type in HPAs and HCZs. To ensure consistency between the Federal and State of Alaska regulations for the management of the scallop fishery, the proposed rule would add a definition for dredge that is the same as the State's definition at 5 Alaska Administrative Code 39.105(16).

To identify groups of gear for the purposes of EFH and HAPC management measures, the categories of bottom contact gear and mobile bottom contact gear would be added to the authorized fishing gear definition. The definition for bottom contact gear would list dredge, hook-and-line, nonpelagic trawl, dinglebar, and pot gears. The definition for mobile bottom contact gear would list dredge, nonpelagic trawl, and dinglebar gears.

The proposed rule would define each management area established to protect EFH and HAPC. The definitions for the HCAs, HPAs, and the HCZs would provide the name of the management area and refer to tables in 50 CFR part 679 for the coordinates of each area to ensure accurate descriptions.

The proposed rule would add a definition for ''federally permitted'' for purposes of the fishing restrictions in the HCAs, HPAs, and HCZ and for VMS. Federally permitted vessels would be those vessels named on either a FFP or a FCVP. These types of permits were identified for this purpose because they are required for anyone fishing for groundfish or crab species in the EEZ, are easily obtained compared to other types of federal fishing permits that require catch history, and can be easily relinquished and reissued. The ability to easily relinquish and reissue the FFPs and FCVPs would provide the fisher the flexibility to choose whether to participate in activities that require compliance with the EFH and HAPC restrictions and VMS requirements. This new definition would ensure that the EFH and HAPC provisions would not apply to vessels named only on other types of federal fishing permits.

The proposed rule would add a definition of ''operate a vessel'' for the purpose of describing when a VMS is required to be transmitting. A vessel would be operating any time it is offloading or processing fish; is in transit to, from, or between the fishing areas; or is fishing or conducting operations in support of fishing.

Section 679.4 Permits

Currently, license limitation permits (LLPs) are issued for fishing groundfish in the GOA with a trawl, non-trawl or both trawl and non-trawl gear endorsement. The Council recommended that vessels named on a LLP with a trawl endorsement be allowed to use non-trawl gear to fish for slope rockfish within the GOASHCA. The proposed rule would revise paragraph (k)(3)(iv)(A) to allow vessels named on an LLP with a trawl endorsement to use non-trawl gear to fish for slope rockfish within the GOASHCA. This revision would provide some accommodation to vessels named on an LLP endorsed only for trawl gear if the operator is willing to use non-trawl gear for slope rockfish fishing within the GOASHCA.

Section 679.7 Prohibitions

The current pelagic trawl performance standard does not apply to the Community Development Quota (CDQ) pollock fishery. To ensure all directed fishing for pollock follows the performance standard at § 679.7(a)(14), the proposed rule would revise the prohibition to make it applicable to all pollock directed fisheries. The current difference in the applicability of the pelagic trawl performance standard between the CDQ and non-CDQ pollock sectors stems from changes made to § 679.7(a)(14) during implementation of Amendment 57 to the BSAI FMP. Amendment 57 prohibited the use of nonpelagic trawl gear in the directed fishery for pollock in the BSAI, except for the CDQ pollock fishery and revised the pelagic trawl performance standard for this fishery (65 FR 31105, May 16, 2000). Amendment 57 exempted vessels fishing for pollock CDQ from the nonpelagic trawl gear prohibition for two reasons.

First, the specific allocative structure of the CDQ Program provides an incentive for the CDQ groups to use pelagic trawl gear in the pollock CDQ fishery in order to minimize bycatch. With limited exceptions, groundfish catch in the pollock CDQ fishery is deducted from CDQ groups' applicable quota categories. The use of nonpelagic trawl gear in the pollock CDQ fishery could increase the catch rate of incidental catch species, which in turn could adversely impact the amount of quota available to account for such species in other target CDQ fisheries. Second, NMFS did not have a definition for directed fishing for pollock CDQ at the time Amendment 57 was approved. Such a definition was then under development as part of Amendment 66 to the BSAI FMP. Without a definition for pollock CDQ directed fishing, a prohibition against using nonpelagic trawl gear while directed fishing would have not been enforceable in the CDQ fisheries.

Subsequent to the implementation of the changes to the trawl performance

standard under Amendment 57, NMFS implemented comprehensive changes to the management of the BSAI pollock, Pacific cod, and Atka mackerel fisheries to protect Steller sea lions from the potential adverse effects of these Alaska groundfish fisheries (68 FR 204, January 2, 2003). As part of such measures, NMFS revised regulations to define directed fishing in the CDQ fisheries based on the same maximum retainable amount standards that apply to the non-CDQ groundfish fisheries. This revision was necessary to provide a means to ensure that Steller sea lion protection measures that apply to groundfish CDQ harvesting activities could be monitored effectively.

To ensure all directed fishing for pollock is conducted using pelagic trawl gear that meets the performance standard at § 679.7(a)(14), the proposed rule would revise this prohibition to delete the word ''non-CDQ,'' thereby making the prohibition applicable to all pollock directed fisheries. This revision would ensure that all directed fishing for pollock in the BSAI is conducted with pelagic trawl gear in an off-bottom mode, resulting in less potential impact on bottom habitat.

A new paragraph (a)(20) would be added to prohibit the anchoring of any federally permitted fishing vessel in a HPA. This prohibition would apply to any vessel named on a FFP or FCVP. Anchoring may disturb bottom habitat during deployment and retrieval of the anchor and should be included in those activities that are prohibited in these fragile and sensitive bottom habitat areas.

The proposed rule would add two new subparagraphs to paragraph (a) to address the VMS requirements for EFH and HAPC management. Paragraph (a)(21) would prohibit all vessels named on a FFP or FCVP from operating in the Aleutian Islands subarea without an operable VMS and without complying with the requirements at § 679.28. Paragraph (a)(22) would prohibit all vessels named on a FFP or FCVP from operating in the GOA with mobile bottom contact gear on board without an operable VMS and without complying with the requirements at § 679.28.

Section 679.22 Closures

The proposed rule would add fishing closures in the BSAI and GOA. New paragraphs (a)(12), (a)(13), (a)(14), and (a)(15) would be added to the closures listed for the BSAI to include the AICHPA, AIHCA, BRHCZ, and ASHPA, respectively. It would add new paragraphs (b)(8), (b)(9), and (b)(10) to the closures listed for the GOA to include the GOACHPA, GOASHCA, and ASHPA, respectively. Portions of the ASHPA occur in both the BSAI and GOA. Therefore, the closures for this HPA are addressed under both management areas. Each new paragraph would refer to the respective new table in 50 CFR part 679 that contains the coordinates for that management area. The proposed rule would prohibit fishing with bottom contact gear by federally permitted vessels in the HPAs. It also would prohibit fishing with nonpelagic trawl gear in the HCAs and fishing in the HCZ with mobile bottom contact gear.

Section 679.24 Gear Limitations

Existing gear limitations prohibit the use of nonpelagic trawl gear for the directed fishing of non-CDQ pollock in the BSAI. Directed fishing for CDQ pollock was not included in this prohibition for the same reasons stated above for the trawl performance standard pursuant to § 679.7(a)(14)(i). To ensure all directed fishing for pollock is conducted with pelagic trawl gear that meets the trawl performance standard, the proposed rule would revise paragraph (b)(4) to remove the term ''non-CDQ.'' This revision would prevent potential opportunistic use of nonpelagic trawl gear for pollock harvest in any CDQ trawl fishery, ensuring that all directed fishing for pollock would be conducted with pelagic trawl gear that must meet the trawl performance standard and that would be less likely to impact bottom habitat.

Section 679.28 Equipment and Operational Requirements

The proposed rule would revise paragraph (f)(3)(iv) to clarify when a vessel operator must stop fishing because of VMS transmission problems. The paragraph currently specifies that fishing must stop if the vessel operator is informed by NMFS that the VMS is not transmitting properly. The proposed rule would further require that fishing must stop if the vessel operator determines that the VMS is not transmitting properly. This revision would ensure that fishing is stopped as soon as possible after either NMFS or the vessel operator determines that the VMS is not functioning properly.

The proposed rule also would revise paragraph (f)(6) to clarify when a VMS must be transmitting for all vessels that are required to have a VMS. For purposes of EFH and HAPC management, the proposed rule would require VMS transmission while a vessel is operating in the Aleutian Islands subarea or while a vessel is operating in the GOA with mobile bottom contact gear on board.

Tables to 50 CFR Part 679

The proposed rule would add six new tables to 50 CFR part 679 to identify and describe the EFH and HAPC management areas which are defined in § 679.2 and closed to certain gear types in § 679.22 or anchoring under § 679.7. Each table would list the individual sites by name and number within each management area and provide the coordinates needed to locate the boundaries of each site. These tables are necessary to ensure that the fishery participants and State and Federal enforcement staff are able to identify those areas that are restricted to fishing activities.

Classification

At this time, NMFS has not determined that the FMP amendments that this rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS will take into account the data, views, and comments received during the comment period.

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

NMFS prepared a final EIS for this proposed action; a notice of availability was published on May 6, 2005, (70 FR 24037) and the Record of Decision was completed on August 8, 2005. The analysis indicates that there are long-term effects of fishing on benthic habitat features off Alaska and acknowledges that considerable scientific uncertainty remains regarding the consequences of such habitat changes for the sustained productivity of managed species. Nevertheless, based on the best available scientific information, the EIS concludes that the effects on EFH are minimal because the analysis finds no indication that continued fishing activities at the current rate and intensity would alter the capacity of EFH to support healthy populations of managed species over the long term. The analysis concludes that no fishing activities under the Council's jurisdiction have more than minimal and temporary adverse effects on EFH, which is the regulatory standard requiring action to minimize adverse effects under the Magnuson-Stevens Act. A variety of practicable management actions could be taken as precautionary measures to provide additional habitat protection.

NMFS prepared an initial regulatory flexibility analysis (IRFA) for the EFH areas and HAPC proposals, as required

by section 603 of the Regulatory Flexibility Act (RFA). NMFS determined that the use of VMS is required for certain classes of vessels for the effective enforcement of both the EFH and HAPC proposals based on the limited USCG and NMFS enforcement resources available. The IRFA prepared for the EFH EIS contains the small entity analysis of the VMS proposals. The IRFAs describe the economic impact this proposed rule would have on small entities, if approved. A description of the actions, why they are being considered, and their legal basis, is provided above. A summary of the analyses follows. Copies of these analyses are available from NMFS (see) **ADDRESSES.**

The Council considered a suite of alternatives for the eastern Bering Sea management area (EBS) in the draft EFH EIS/RIR/IRFA. Based on that preliminary analysis, the Council decided not to adopt new management measures for EFH protection in the EBS at this time, but to initiate an expanded analysis to consider potential mitigation measures for the EBS. The Council determined that existing information was insufficient to justify immediate action to add new habitat protection measures in the EBS. By delaying implementation of EFH measures in the EBS, pending additional study, the Council effectively relieved potential adverse impacts on directly regulated small (and large) entities in the EBS fisheries.

Aleutian Islands Habitat Conservation Area

This proposed action would designate 279,454 nm^2 of the Aleutian Islands subarea (AI), or about 96 percent, as the AIHCA and close the area within the AIHCA boundaries to fishing by nonpelagic trawl gear.

Forty-six trawlers used nonpelagic trawl gear in the Aleutian Islands subarea in 2003. Their average gross revenues from all Federal and State of Alaska managed fisheries were $3.6 million. Of these 46 operations, 13 qualify as small entities under Small Business Administration (SBA) criteria.[1] Average gross revenues for these 13 were about $626,000.

[1] The SBA criteria of $3.5 million in gross receipts for finfish and shellfish harvesters was used for the IRFAs. These analyses were approved by the NMFS Alaska Regional Economist in April 2005. Effective January 5, 2006, SBA increased the criteria to $4 million. Due to the imprecision of estimating gross receipts, the values in the approved analyses are not likely to change significantly based on the new criteria, and therefore, the analyses are not revised to reflect the change.

The analyses summarized in the IRFAs characterized the revenues derived from catches made in areas to be closed or restricted by these measures as ''revenues at risk.'' These revenues are at risk, rather than foregone, because it is possible, and in many instances likely, that fishing operations may be able to offset some or all of these potential losses by changing their fishing activity (*e.g.*, change gear or moving to alternative fishing grounds). Operations that change their activities to offset revenue-at-risk losses may incur higher operational costs in doing so. Revenues at risk are a key empirical measure of potential adverse economic impacts and are used as an index of expected gross receipt impacts on directly regulated small entities within the fleet. Other adverse economic and operational impacts that may accrue to small entities as a result of adopting the proposed action, but which are not amenable to empirical quantification, are included in the IRFAs, albeit largely in qualitative terms.

The preferred alternative would have placed $1.23 million of the nonpelagic trawl fleet's gross revenues at risk, if it had been in effect in 2001. This represents about 2.2 percent of the $55.81 million of status quo revenue in the affected fisheries in 2001, for all nonpelagic trawl trawlers, large and small, fishing in the AIHCA. Most, if not all, of the revenue at risk could have been mitigated by redeploying fishing effort into adjacent areas that would remain open to nonpelagic trawl gear. Such changes in fishing behavior, however, may result in increased operational costs.

Alternative 1 is the status quo/no action alternative. Alternatives 2 and 3 would have no implications for the Aleutian Islands subarea nonpelagic trawl fleet. Alternative 4 would prohibit nonpelagic trawl use in four large areas of the Aleutian Islands subarea (near Semisopochnoi Island, Stalemate Bank, Bowers Ridge, and Seguam Pass). The areas that would be closed under this alternative are significantly smaller than under the preferred alternative (Alternative 5C). Alternative 5A would prohibit nonpelagic trawl gear use in five large areas of the Aleutian Islands subarea (Semisopochnoi Island, Seguam Pass, Yunaska Island, Stalemate Bank, and Bowers Ridge). Various combinations of areas would be closed to nonpelagic trawl gear in the Aleutian Islands subarea under each of three different Alternative 5B options (Options 1, 2, and 3). In addition, Options 1 and 2 would require reductions in total allowable catch amounts (TACs) for Pacific cod, Atka mackerel, and rockfish equivalent to the expected catch of each species that would have come from the closed areas. Alternative 5C is the preferred alternative, and potential adverse impacts were described above. Alternative 6 would prohibit the use of all bottom contact fishing gear within about 20 percent of all fishable waters in the Aleutian Islands subarea (*i.e.*, 20 percent of the waters shallower than 1,000 m).

Aleutian Islands Coral Habitat Protection Areas

The preferred alternative would designate six AICHPAs as EFH, and prohibit the use of all bottom contact fishing gear (*i.e.,* onpelagic trawl, hook-and-line, pot, dinglebar, and dredge) within these areas. This action has the potential to adversely impact small entities using bottom contact gear in these six areas. The small entities that would be directly regulated by this action would include those with an FFP or FCVP fishing in the Aleutian Islands subarea. The IRFA estimates that there were 124 such small entities in 2003. Average gross revenues for these small entities, from all fishing sources in Alaska, were about $950,000 based on 2003 fishing records.

This alternative would place relatively small amounts of revenue at risk in the Aleutian Islands subarea groundfish, halibut, and crab fisheries. Given the relatively small, discrete areas encompassed by the designated coral habitat protection areas, it was difficult to ascertain the precise catch and revenue that would be placed at risk by the proposed restrictions in these areas. Using data from 2001, NMFS estimated that about $235,000 or less than 0.5 percent of the status quo groundfish revenue in the Aleutian Islands subarea would be at risk. The International Pacific Halibut Commission (IPHC) estimated using data from 1995 to 2002 that about 4.4 percent of the total IPHC Area 4B harvest over that period would have been at risk (insufficient data were available to derive a catch value for these halibut). Ex-vessel revenue at risk in crab fisheries would have totaled approximately $313,000, or less than 0.1 percent of the status quo revenue of $121.9 million, over the 8-year period. Catch and revenue placed at risk in the Aleutian Islands subarea by prohibiting bottom contact gear in the six coral gardens would likely be mitigated by transferring fishing effort to adjacent areas open to bottom contact gear fishing. Changes in operating behavior may result in increases in operating costs and lower net returns. However, cost data needed to derive these net

revenue estimates are not available to NMFS.

Four alternatives for protecting Aleutian Islands subarea corals were considered in the HAPC EA/RIR/IRFA. Alternative 1 was the status quo/no action alternative. Alternative 2 is the AICHPA and the preferred alternative discussed above. Alternative 3 would classify much of Bowers Ridge as HAPC, and prohibit the use of mobile bottom contact gear within it. This action also was adopted as part of the preferred alternative; see the analysis of the BRHCZ below. Alternative 4 would designate four sites within the Aleutian Islands subarea as HAPCs (South Amlia/Atka, Kanaga Volcano, Kanaga Island, and Tanaga Islands), with two options for gear restrictions. Under Alternative 5, all the areas designated under Alternatives 2, 3, and 4 would be adopted.

Bowers Ridge Habitat Conservation Zone

This action would establish a BRHCZ as a HAPC. The action would prohibit mobile bottom contact gear (*i.e.,* nonpelagic trawl, dredge, and dinglebar) within the area designated as HAPC. Small entities that use mobile bottom contact gear within the BRHCZ would be directly regulated, and thus adversely impacted by this action.

The most consistent source of activity on Bowers Ridge, from the categories of gear that would be prohibited there, has been from head-and-gut trawl catcher processors. Head-and-gut trawl catcher processors are almost all large entities, based on SBA criteria; possibly one out of a potential 23 entities may be characterized as a small entity.

The potential adverse economic impacts on small vessels from this action would be attributable to placing at risk the revenues the vessels might have earned from fishing activity on Bowers Ridge. These revenues would be approximately 0.02 percent of gross wholesale groundfish revenue for vessels that have consistently fished in this area since 1995.

CDQ Pollock Vessels

The proposed rule would prohibit CDQ vessels from directly fishing for pollock in such a way that the vessel would have more than 20 crabs of any species, with a carapace width greater than 1.5 inches, on board at any time (§ 697.7(a)(14)(i)). CDQ vessels directly fishing for pollock also would be prohibited from using nonpelagic trawl gear in § 697.24. Because CDQ vessels currently use pelagic trawl gear for directed fishing for pollock, these proposed regulation changes are not likely to affect the revenue from this activity.

Aleutian Islands Subarea VMS Requirements

Under this proposed action, certain federally permitted vessels operating in the Aleutian Islands subarea would be required to carry and operate a VMS. The small entities that would be directly regulated by this action are those with an FFP or FCVP fishing in Federal or State of Alaska waters in the Aleutian Islands subarea. The IRFA estimated that potentially 124 directly regulated small entities would be subject to this action, based on 2003 data. Average gross revenues for these small entities, from all fishing sources in Alaska, were about $950,000 in 2003.

The IRFA estimates of small entities directly regulated by this action are based on the number of vessels that reportedly operated in Federal waters of the Aleutian Islands subarea in 2003. Vessels that operated solely within State of Alaska waters were not included in this count. Vessels fishing exclusively within State waters during a fishing year were assumed to be able to avoid the VMS requirement by surrendering their FFP or FCVP.

Fifty-three of these vessels already carried VMS in 2003 to comply with other regulations. Based on these data, an estimated 71 operations would have to acquire and use VMS. Average VMS acquisition and installation costs for a vessel are $1,550; average annual transmission charges are $451 for vessels initially acquiring VMS, and $994 for vessels that already have VMS. Average annual repair costs are estimated to be $28. Because the VMS requirement would be permanent, all vessels using VMS would be expected to have to replace these units as they fail. This would create additional future costs. However, replacement costs are likely to decrease through time, as competition and technological advances reduce VMS costs.

The analysis for the Aleutian Islands subarea VMS proposed action examined status quo and an alternative that would have exempted vessels less than or equal to 32 feet in length from the requirement. Because status quo had no requirement to add VMS to additional vessels and no additional VMS transmission requirements, no economic impacts were identified from the status quo. The exemption alternative paralleled a similar exemption to VMS requirements considered in the GOA VMS proposal. The exemption alternative was not adopted for the Aleutian Islands subarea because it would only have potentially affected three vessels. Revenue information for these three entities cannot be reported because of confidentiality restrictions. Nonetheless, NMFS determined that the potential for small vessels to employ bottom contact fishing gear in protected EFH and HAPC areas in the Aleutian Islands subarea makes it necessary for all vessels to carry VMS, if the closures are to be enforced effectively. Average installation costs for these three vessels were estimated to be $1,550. Average annual transmission costs were $428. Total installation costs for these three operations were about $5,000. Total annual transmission costs were about $1,000. With annual repair costs averaging about $93, total repair costs for these vessels would be about $300.

GOA Slope Habitat Conservation Areas

Ten areas within the GOA, along the upper and intermediate slope (200 m to 1,000 m in depth), are classified as GOAHCA. The proposed action would prohibit fishing with nonpelagic trawl gear within these areas. The entities potentially directly regulated by this action are those trawlers fishing with nonpelagic trawl gear in the GOA. Ninety-eight vessels used nonpelagic trawl gear in Federal waters in the GOA in 2003. Average gross revenues for these vessels from all Federal and State managed fisheries in Alaska were about $2.0 million. Fifty-eight of these 98 vessels were determined to be ''small businesses'' under SBA criteria. These 58 vessels had average gross receipts of $494,000 from all sources.

The preferred alternative would place $1.17 million of revenue at risk, or 4.2 percent of the total status quo revenue of $27.69 million in nonpelagic trawl groundfish fisheries in 2001. Within the entire GOA, substantial nonpelagic trawl fishing areas exist adjacent to the 10 designated areas where the revenue at risk might be mitigated by a redeployment of fishing effort. Most, if not all, of the revenue at risk in the GOA would likely be recovered by redeployment of fishing effort to adjacent areas, or by switching to pelagic trawl gear or fixed gear. The proviso that nonpelagic trawl operators may switch gear type and continue to target slope rockfish in these protection areas using nontrawl gear represents a substantial accommodation. If adopted, this would effectively relieve the LLP trawl gear restriction. Thus, vessels named on a LLP with a trawl gear only endorsement could be used to fish for slope rockfish in the GOASHCA with hook-and-line gear. Larger trawlers that either already have pelagic trawl gear available, or have sufficient horsepower to convert to pelagic trawl gear to target

slope rockfish, may have an advantage over smaller trawlers that might not have the physical capability or the economic incentive to acquire and use pelagic trawl. Thus, under this alternative there could be a transfer of revenue (and associated catch share) in the fishery from the smaller trawlers to the larger trawlers using pelagic trawl gear. NMFS cannot estimate the magnitude of any transfer without specific knowledge of the strategies that would be followed by different fleet segments. Vessels that shift from their preferred gear type (e.g., from nonpelagic trawl to pelagic trawl or fixed gear) or from their preferred fishing area may incur higher operating costs, even if they were able to earn the same levels of gross revenues, thus reducing any net revenues that might accrue.

The Council considered alternatives to the proposed action (the Council's Alternative 5C). Alternative 1 is the status quo and no action alternative, and no economic impacts were identified with this alternative. Alternative 2 would close 11 areas on the GOA slope (between depths of 200 m and 1,000 m) to directed rockfish fishing conducted with nonpelagic trawl gear. Economic costs of Alternative 2 would have been limited to the nonpelagic trawl slope rockfish fishery in the GOA. The total revenue at risk in this fishery under Alternative 2 would have been $900,000 or 9.6 percent of the 2001 status quo revenue. Alternative 3 would close the entire GOA slope between 200 m and 1,000 m in depth to directed rockfish fishing using nonpelagic trawl gear. Based on 2001 data, Alternative 3 would have placed a total of $2.65 million of gross revenue at risk in the GOA nonpelagic trawl slope rockfish target fisheries, including the value of retained bycatch. This was equal to 28.3 percent of the reported 2001 status quo total revenue. In the GOA, Alternative 4 would duplicate the closures under Alternative 2 and would have the same economic impact. Alternative 5A would close 10 areas on the GOA slope between 200 m and 1,000 m in depth to vessels targeting rockfish with nonpelagic trawl gear. Alternative 5A would have affected a number of nonpelagic trawl fisheries, but primarily fisheries targeting rockfish and Pacific cod. Under Alternative 5A, the total revenue at risk in the nonpelagic trawl rockfish fishery would have been $2.82 million, or 30.1 percent of the 2001 status quo revenue. The total revenue at risk in the GOA nonpelagic trawl Pacific cod fishery would have been $380,000 or 4.9 percent of the 2001 status quo revenue. Alternative 5B would prohibit the use of nonpelagic trawl gear for all groundfish fisheries within designated sites of the GOA slope between 200 m and 1,000 m in depth and would prohibit the use of nonpelagic trawl gear for targeting slope rockfish anywhere on the GOA slope at depths between 200 m and 1,000 m. Alternative 5B would affect a number of nonpelagic trawl fisheries, but primarily fisheries targeting rockfish and Pacific cod. The total revenue at risk in the nonpelagic trawl rockfish fishery under Alternative 5B would have equaled $2.82 million or 30.1 percent of the 2001 status quo revenue. The total revenue at risk in the GOA nonpelagic trawl Pacific cod fishery would have been $380,000, or 4.9 percent of the 2001 status quo revenue. Alternative 5C is the preferred alternative, and has been discussed above. Alternative 6 would close 20 percent of the fishable waters in the Alaska EEZ to fishing with any bottom contact gear. In the GOA, Alternative 6 would have the largest effect on the halibut hook-and-line fishery, with $32.12 million in revenue at risk or 33.9 percent of the 2001 status quo revenue. Sablefish hook-and-line and nonpelagic trawl fisheries would have $6.66 million in revenue at risk or 12.5 percent of the 2001 status quo revenue. Rockfish hook-and-line and nonpelagic trawl fisheries would have had $2.29 million of revenue at risk or 21.5 percent of the 2001 status quo revenue. Based on 2001 data, $2.63 million of revenue would have been placed at risk in the GOA hook-and-line and nonpelagic trawl Pacific cod fisheries or 11.7 percent of the status quo revenue. Alternative 6 also would have placed $940,000 of revenue at risk or 34.3 percent of the 2001 status quo revenue for the scallop dredge fishery. The GOA scallop revenue at risk almost certainly could not have been recovered by redeploying fishing effort to remaining open areas, because the permitting is not transferable between districts.

Alaska Seamount Habitat Protection Areas

The Council designated 15 seamount areas off Alaska as HAPCs, and recommended prohibiting all federally managed bottom contact fishing within these proposed protected areas. Under this action, directly regulated small entities would be those that would have fished on these seamount areas with bottom contact gear in the absence of the proposed closures.

Little groundfish fishing took place within the seamount habitat protection areas during the 1995–2003 period. Fixed gear catcher vessels from 33 feet to 59 feet (10.1 m to 18.1 m) LOA, dominated what little fishing activity was reported on the seamounts. The numbers of these vessels annually ranged from one to seven, from 1995 to 2003. Other vessels fished on the seamounts only sporadically. The fishing activity that did occur generated approximately $20,000 in equivalent gross wholesale revenue annually in 1995, 1996, and 2000, and approximately $10,000 in annual equivalent gross wholesale revenue from 2001–2003.

The potential adverse economic impact of this action on these directly regulated small entities (that is, the revenue placed at risk by forcing them to fish in areas other than they would have voluntarily chosen to fish) appears to be very small. This impact would have accounted for 1/100th of 1 percent of the total groundfish revenue for fixed gear catcher vessels over the period 1995–2003. The revenue at risk for other operations is even smaller.

The Council considered a no action alternative and an alternative that would have prohibited bottom contact fishing within five of the 15 seamount areas included in the preferred alternative.

GOA Coral Habitat Protection Areas

Five GOACHPAs would be established; four of these are located on the Fairweather Grounds, and one is located off of Cape Ommaney. These areas encompass a total of 13.5 nm^2. Federally permitted vessels would be prohibited from fishing with bottom contact gear in these GOACHPAs.

The directly regulated small entities that may be adversely affected by this rule are vessels with FFPs or FCVPs that would fish with bottom contact gear in these areas in the absence of any gear restrictions.

The number of vessels fishing with bottom contact gear in these areas likely includes nearly all federally permitted vessels, given that the use of pelagic trawl gear in these areas is either limited or prohibited. Between 80 and 103 fixed gear catcher vessels from 33 feet to 59 feet (10.1 m to 18.1 m) fished for groundfish within the greater statistical areas within which the HAPC sites are located, from 1995 to 2003. In total, 274 separate vessels in this category appear to have operated in proximity to these HAPCs during these years. Eleven groundfish vessels of other categories also operated in the areas during these years. The logbook data of fewer than five halibut vessels show any fishing activity in the proposed HAPCs during this period. This number is small compared to the 1,820 halibut vessels

that appear to have harvested halibut in the area off of Southeast Alaska (IPHC area 2C) during this period.

Potential groundfish revenue at risk was about $10,000 per year during the 1995–2003 period. In an average year, only 3/100th of 1 percent of the total groundfish revenue for the affected vessels appears to be placed at risk by this alternative, which is probably an overestimate of the true revenues at risk. The small part of the halibut fleet operating in these areas and the availability of alternative halibut fishing areas (due to the small areas closed under these proposals) suggest that the impacts on affected halibut operations would be minimal.

Three alternatives to the preferred alternative were considered. Alternative 1 is the status quo, no action, alternative and no economic impacts were identified for this alternative. Alternative 2 would designate three sites along the continental slope at Sanak Island, Albatross, and Middleton Island as HAPCs, with options to close the sites to either mobile bottom contact gear or nonpelagic trawl gear permanently or for five years. Under Alternative 2, gross wholesale revenues for groundfish catcher vessels in an average year would be expected to decrease by $600,000 or 5/100th of 1 percent. Alternative 3 is the preferred alternative and was discussed above. Alternative 4 would include the measures from both Alternatives 2 and 3. Alternative 4 would have similar economic impacts as Alternatives 2 and 3. Alternative 4 may result in increased operating costs, but based on the low level of revenue at risk, any increase is likely to be small.

GOA VMS Requirements

Under this action, vessels (including any small entity) named on FFPs or FCVPs would be required to operate a VMS unit whenever operating in the GOA with mobile bottom contact gear on board. This action adds a regulatory definition of ''operating'' that covers vessels not in port, and vessels in port loading or offloading fish, fish product, or fishing gear.

The class of vessels using mobile bottom contact gear includes vessels fishing in the GOA with dredge, dinglebar, and non-pelagic trawl gear. One hundred thirteen vessels were estimated to fall in this category; 93 of these were estimated to already carry VMS, and 20 were estimated to need to acquire it. The average gross revenues for the 113 vessels were $1.8 million. Seventy-three of these fishing entities were small, according to the criteria of the SBA; 53 of the small vessels already had VMS, and 20 would have to acquire it. Average gross revenues for the small entities were $453,000. The small entities were expected to incur average transmission cost increases of about $500 and average repair cost increases of about $16 (because many vessels would not acquire VMS or incur new repair costs because of the rule, and because most of these vessels were over 32 feet (9.8 m) LOA and had relatively lower estimated repair costs). Although installation costs were $1,550 per unit, average installation costs were about $400 per vessel (because so many of these vessels would not have to acquire VMS). Total first year costs of acquisition, repair, and transmission were estimated to be about $71,000 (or about 2/10ths of a percent of average gross revenues). All estimates were prepared using 2003 data.

The analysis examined one alternative that would have a greater impact on small entities than the preferred alternative, but that would provide a higher level of surveillance for protected areas. Under this ''comprehensive coverage'' requirement, VMS would be required on all vessels operating in the GOA with bottom contact gear. The analysis included several alternatives, in addition to the preferred alternative, that might have a smaller impact on small entities than the comprehensive coverage alternative just described. These included alternatives that would exempt vessels less than or equal to 32 feet (9.8 m) LOA, 30 feet (9.2 m) LOA, or 25 feet (7.7 m) LOA; vessels fishing with dinglebar gear for ling cod; and vessels fishing with dredge gear for scallops.

The IRFA estimates of small entities affected by this action are based on estimates of the number of vessels that fished in Federal waters of the GOA in 2003. Vessels that operated solely within State of Alaska waters were not counted. The analysis assumed that vessels fishing exclusively within State waters, would have chosen to avoid the VMS requirement by surrendering their FFP or FCVP.

The IRFA estimated that if all vessels fishing bottom contact gear had been required to carry VMS, the directly regulated small entities would total approximately 865, based on 2003 data. Average gross revenues for these small entities, from all fishing sources in Alaska, were about $349,000 in 2003.

Two hundred thirty of the 865 small vessels carried VMS in 2003, to comply with other regulations (*e.g.*, Steller sea lion rules). Therefore, perhaps as many as 635 small entities could be required to acquire and operate VMS. Average purchase and installation costs for vessels that would have to install VMS are $1,550, average annual transmission costs are estimated to be $423 for vessels initially acquiring VMS and $671 for vessels that already have VMS. Average annual repair costs are estimated to be approximately $39 for these operators. Because VMS requirements would be permanent, all vessels using VMS would be expected to replace these units as they fail, creating additional longer term costs. However, these are likely to decrease through time as competition and technological advances reduce VMS per unit costs.

Excluding vessels less than or equal to 32 feet (9.8 m) LOA from the comprehensive coverage alternative would exempt 84 vessels from the requirement, based on 2003 vessel counts. (An additional 11 vessels of unknown length might conceivably be exempted under this rule.) These 84 small entities would avoid purchase and installation costs of the VMS unit ($1,550), annual transmission costs ($372), and annual repair costs ($93). These vessels had average gross revenues of $103,000 in 2003.

Excluding vessels less than or equal to 30 feet (9.2 m) LOA would exempt 28 vessels from the comprehensive VMS operating requirement base on 2003 vessel counts. An additional 11 vessels of unknown length might be exempted. These 28 small vessels would avoid purchase and installation costs of the VMS unit ($1,550), annual transmission costs ($252), and annual repair costs ($93). These vessels had average gross revenues of about $17,000 in 2003.

Excluding vessels less than or equal to 25 feet (7.7 m) LOA would exempt 15 vessels from the comprehensive VMS requirement, based on 2003 vessel counts. An additional 11 vessels of unknown length might be exempted. These 15 vessels would avoid purchase and installation costs of the VMS unit ($1,550), annual transmission costs ($203), and annual repair costs ($93). These vessels had average gross revenues of about $5,000 in 2003.

Excluding vessels using dinglebar gear would exempt four vessels from the proposed comprehensive VMS requirement, based on 2003 data. These four vessels would avoid purchase and installation costs of the VMS unit ($1,550), annual transmission costs ($509), and annual repair costs ($59). These vessels had average gross revenues of about $43,000 in 2003.

Excluding vessels using dredge gear would exempt two vessels from the comprehensive requirement based on 2003 data. These two vessels would avoid purchase and installation costs of the VMS unit ($1,550), annual

transmission costs ($578), and annual repair costs ($47). Average gross revenue information for these vessels cannot be released because of confidentiality protections.

After consideration of the analyses, and hearing industry testimony, the Council recommended the preferred alternative of only requiring VMS equipment on mobile bottom contact vessels in the GOA. In making this decision, the Council sought to minimize the impact of the action on small entities, while providing protection to key habitat components, by restricting the VMS coverage requirement to this class of vessel. Mobile bottom contact gear had the greatest potential for adverse impact to protected habitat areas, and a restriction of the VMS requirement to the mobile vessels exempted 792 small entities (865 under comprehensive coverage minus 73 under the preferred alternative) from the requirement.

The analyses of the VMS requirement, reported above, are based on the assumption that fishing operations that fish only in State waters would surrender their FFPs to avoid a VMS requirement. Not all vessels may do this. In order to take a more expansive view of the potential application of this rule, cost estimates have been prepared under the assumption that 558 small entities fishing for halibut exclusively in State waters, with no other fishing conducted in Federal waters, would choose to carry VMS equipment and transmissions. Under these circumstances, a total of 1,193 small entities would acquire VMS. Average acquisition and installation costs would be $1,550, average annual transmission costs would be about $400, and average annual repair costs would be $60. Average gross revenue for these operations, based on 2003 data, would be approximately $161,000. As previously reported, 236 small entities covered by the regulation currently carry VMS. They would incur additional transmission costs averaging about $700 per vessel per year. Average gross revenues for these entities were about $563,000 for 2003.

The portion of the regulations that establish the fishing restriction for the AIHCA AICHPAs, BRHCZ, GOASHCAs, ASHPAs, and GOACHPAs do not impose new recordkeeping or reporting requirements on the regulated small entities. The VMS portion of this action would add new reporting requirements for vessels that carry an FFP or FCVP and fish in any fishery in the Aleutian Islands subarea, or those that carry an FFP or FCVP and have mobile bottom contact fishing gear onboard while operating in the GOA. These fishing operations would be required to carry VMS units and to report their locations every half hour while they are participating in fisheries subject to the requirement. Moreover, they would be required to notify NOAA Office of Law Enforcement (OLE) that their VMS units are active, once installed, and before vessel operation. They would be required to notify NOAA OLE in the event of a breakdown in the unit.

The IRFAs did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

This proposed rule contains a collection-of-information requirement, under OMB No. 0648–0445, subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden per response are estimated to average: 6 seconds for each VMS transmission, 12 minutes for VMS check-in form, 6 hours for VMS installation, and 4 hours for VMS annual maintenance. The response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

NMFS seeks public comment regarding whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection-of-information to NMFS Alaska Region at the **ADDRESSES** above, and e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB Control Number.

Informal consultation under the Endangered Species Act was concluded for the EFH and HAPC amendments on April 7, 2005. As a result of the informal consultation, the Regional Administrator determined that fishing activities under this rule are not likely to adversely affect endangered or threatened species or their critical habitat.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 16, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

2. In § 679.2, add in alphabetical order the new definitions for ''Alaska Seamount Habitat Protection Areas,'' ''Aleutian Islands Coral Habitat Protection Areas,'' ''Aleutian Islands Habitat Conservation Area,'' ''Bowers Ridge Habitat Conservation Zone,'' ''Federally permitted,'' ''Gulf of Alaska Coral Habitat Protection Areas,'' ''Gulf of Alaska Slope Habitat Conservation Areas,'' and ''Operate a vessel''; and under ''Authorized fishing gear'', redesignate paragraphs (9) through (17) as paragraphs (12) through (20), redesignate paragraphs (2) through (8) as paragraphs (4) through (10), redesignate paragraph (1) as paragraph (2), and add new paragraphs (1), (3), and (11) to read as follows:

§ 679.2 Definitions.

* * * * *

Alaska Seamount Habitat Conservation Areas means management areas established for the protection of seamount habitat areas of particular concern in the BSAI and GOA. See Table 22 to this part.

* * * * *

Aleutian Islands Coral Habitat Protection Areas means management areas established for the protection of certain coral garden areas in the Aleutian Islands subarea. See Table 23 to this part.

Aleutian Islands Habitat Conservation Area means a management area established for the protection of fish habitat in the Aleutian Islands subarea. See Table 24 to this part.

* * * * *

Authorized fishing gear * * *

(1) *Bottom contact gear* means nonpelagic trawl, dredge, dinglebar, pot, or hook-and-line gear.

* * * * *

(3) *Dredge* means a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor.

* * * * *

(11) *Mobile bottom contact gear* means nonpelagic trawl, dredge, or dinglebar gear.

* * * * *

Bowers Ridge Habitat Conservation Zone means a management area established for the protection of the Bowers Ridge and Ulm Plateau habitat areas of particular concern in the BSAI. See Table 25 to this part.

* * * * *

Federally permitted means a vessel that is named on either a Federal fisheries permit issued pursuant to § 679.4(b) or on a Federal crab vessel permit issued pursuant to § 680.4(k) for purposes of fishing restrictions in habitat conservation areas, habitat conservation zones, and habitat protection areas; of anchoring prohibitions in habitat protection areas; and of VMS requirements.

* * * * *

Gulf of Alaska Coral Habitat Protection Areas means management areas established for the protection of coral habitat areas of particular concern in the Gulf of Alaska. See Table 26 to this part.

Gulf of Alaska Slope Habitat Conservation Areas means management areas established for the protection of essential fish habitat on the Gulf of Alaska slope. See Table 27 to this part.

* * * * *

Operate a vessel means for purposes of VMS that the fishing vessel is:

(1) Offloading or processing fish;

(2) In transit to, from, or between the fishing areas; or

(3) Fishing or conducting operations in support of fishing.

* * * * *

3. In § 679.4, paragraph (k)(3)(iv)(A) is revised to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(3) * * *

(iv) * * *

(A) *General.* A vessel may only use gear consistent with the gear designation on the LLP license authorizing the use of that vessel to fish for license limitation groundfish or crab species, except that a vessel fishing under authority of an LLP license endorsed only for trawl gear may fish for slope rockfish with non-trawl gear within the Gulf of Alaska Slope Habitat Conservation Areas, as described in Table 27 to this part.

* * * * *

4. In § 679.7, paragraph (a)(14)(i) is revised, and paragraphs (a)(20) through (a)(22) are added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(14) * * *

(i) *BSAI.* Use a vessel to participate in a directed fishery for pollock using trawl gear and have on board the vessel, at any particular time, 20 or more crabs of any species that have a carapace width of more than 1.5 inches (38 mm) at the widest dimension.

* * * * *

(20) Anchor any federally permitted fishing vessel in any habitat protection area described in Tables 22, 23, and 26 of this part.

(21) Operate a federally permitted vessel in the Aleutian Islands subarea without an operable VMS and without complying with the requirements at § 679.28.

(22) Operate a federally permitted vessel in the GOA with mobile bottom contact gear on board without an operable VMS and without complying with the requirements at § 679.28.

* * * * *

5. In § 679.22, paragraph (a)(12) is revised and paragraphs (a)(13) through (a)(15) and (b)(8) through (b)(10) are added to read as follows:

§ 679.22 Closures.

* * * * *

(a) * * *

(12) *Alaska Seamount Habitat Protection Areas.* No federally permitted vessel may fish with bottom contact gear in the Alaska Seamount Habitat Protection Areas, as described in Table 22 to this part.

(13) *Aleutian Islands Coral Habitat Protection Areas.* No federally permitted vessel may fish with bottom contact gear in the Aleutian Islands Coral Habitat Protection Areas, as described in Table 23 to this part.

(14) *Aleutian Islands Habitat Conservation Area.* Except within those areas identified as opened to nonpelagic trawl gear fishing in Table 24, no federally permitted vessel may fish with nonpelagic trawl gear in the Aleutian Islands Habitat Conservation Area, as described in Table 24 to this part.

(15) *Bowers Ridge Habitat Conservation Zone.* No federally permitted vessel may fish with mobile bottom contact gear in the Bowers Ridge Habitat Conservation Zone, as described in Table 25 to this part.

(b) * * *

(8) *Alaska Seamount Habitat Protection Areas.* No federally permitted vessel may fish with bottom contact gear in the Alaska Seamount Habitat Protection Areas, as described in Table 22 to this part.

(9) *Gulf of Alaska Coral Habitat Protection Areas.* No federally permitted vessel may fish with bottom contact gear in the Gulf of Alaska Coral Habitat Protection Areas, as described in Table 26 to this part.

(10) *Gulf of Alaska Slope Habitat Conservation Areas.* No federally permitted vessel may fish with nonpelagic trawl gear in the Gulf of Alaska Slope Habitat Conservation Areas, as described in Table 27 to this part.

* * * * *

6. In § 679.24, paragraph (b)(4) is revised to read as follows:

§ 679.24 Gear limitations.

* * * * *

(b) * * *

(4) *BSAI pollock nonpelagic trawl prohibition.* No person may use nonpelagic trawl gear to engage in directed fishing for pollock in the BSAI.

* * * * *

7. In § 679.28, paragraphs (f)(3)(iv) and (f)(6) are revised to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(3) * * *

(iv) Stop fishing immediately if:

(A) Informed by NMFS staff or an authorized officer that NMFS is not receiving position reports from the VMS transmitter, or

(B) The vessel operator determines that the VMS is not transmitting properly.

* * * * *

(6) *When must the VMS transmitter be transmitting?* Your vessel's transmitter must be transmitting if:

(i) You operate a vessel in any reporting area (see definitions at § 679.2) off Alaska while in any fishery requiring VMS, for which the vessel has a species and gear endorsement on its Federal fisheries permit under § 679.4(b)(5)(vi), is open;

(ii) You operate a federally permitted vessel in the Aleutian Islands subarea; or

(iii) You operate a federally permitted vessel in the GOA and have mobile bottom contact gear on board.

* * * * *

8. In 50 CFR part 679, tables 22 through 27 are added to read as follows:

TABLE 22.—ALASKA SEAMOUNT HABITAT PROTECTION AREAS

Area No.	Name	Latitude	Longitude
1	Dickins Seamount	54 39.00 N	136 48.00 W.
	Dickins Seamount	54 39.00 N	137 9.00 W.
	Dickins Seamount	54 27.00 N	137 9.00 W.
	Dickins Seamount	54 27.00 N	136 48.00 W.
2	Denson Seamount	54 13.20 N	137 6.00 W.
	Denson Seamount	54 13.20 N	137 36.00 W.
	Denson Seamount	53 57.00 N	137 36.00 W.
	Denson Seamount	53 57.00 N	137 6.00 W.
3	Brown Seamount	55 0.00 N	138 24.00 W.
	Brown Seamount	55 0.00 N	138 48.00 W.
	Brown Seamount	54 48.00 N	138 48.00 W.
	Brown Seamount	54 48.00 N	138 24.00 W.
4	Welker Seamount	55 13.80 N	140 9.60 W.
	Welker Seamount	55 13.80 N	140 33.00 W.
	Welker Seamount	55 1.80 N	140 33.00 W.
	Welker Seamount	55 1.80 N	140 9.60 W.
5	Dall Seamount	58 18.00 N	144 54.00 W.
	Dall Seamount	58 18.00 N	145 48.00 W.
	Dall Seamount	57 45.00 N	145 48.00 W.
	Dall Seamount	57 45.00 N	144 54.00 W.
6	Quinn Seamount	56 27.00 N	145 0.00 W.
	Quinn Seamount	56 27.00 N	145 24.00 W.
	Quinn Seamount	56 12.00 N	145 24.00 W.
	Quinn Seamount	56 12.00 N	145 0.00 W.
7	Giacomini Seamount	56 37.20 N	146 7.20 W.
	Giacomini Seamount	56 37.20 N	146 31.80 W.
	Giacomini Seamount	56 25.20 N	146 31.80 W.
	Giacomini Seamount	56 25.20 N	146 7.20 W.
8	Kodiak Seamount	57 0.00 N	149 6.00 W.
	Kodiak Seamount	57 0.00 N	149 30.00 W.
	Kodiak Seamount	56 48.00 N	149 30.00 W.
	Kodiak Seamount	56 48.00 N	149 6.00 W.
9	Odessey Seamount	54 42.00 N	149 30.00 W.
	Odessey Seamount	54 42.00 N	150 0.00 W.
	Odessey Seamount	54 30.00 N	150 0.00 W.
	Odessey Seamount	54 30.00 N	149 30.00 W.
10	Patton Seamount	54 43.20 N	150 18.00 W.
	Patton Seamount	54 43.20 N	150 36.00 W.
	Patton Seamount	54 34.20 N	150 36.00 W.
	Patton Seamount	54 34.20 N	150 18.00 W.
11	Chirikof &Marchand Seamounts	55 6.00 N	151 0.00 W.
	Chirikof & Marchand Seamounts	55 6.00 N	153 42.00 W.
	Chirikof & Marchand Seamounts	54 42.00 N	153 42.00 W.
	Chirikof & Marchand Seamounts	54 42.00 N	151 0.00 W.
12	Sirius Seamount	52 6.00 N	160 36.00 W.
	Sirius Seamount	52 6.00 N	161 6.00 W.
	Sirius Seamount	51 57.00 N	161 6.00 W.
	Sirius Seamount	51 57.00 N	160 36.00 W.
13	Derickson Seamount	53 0.00 N	161 0.00 W.
	Derickson Seamount	53 0.00 N	161 30.00 W.
	Derickson Seamount	52 48.00 N	161 30.00 W.
	Derickson Seamount	52 48.00 N	161 0.00 W.
14	Unimak Seamount	53 48.00 N	162 18.00 W.
	Unimak Seamount	53 48.00 N	162 42.00 W.
	Unimak Seamount	53 39.00 N	162 42.00 W.
	Unimak Seamount	53 39.00 N	162 18.00 W.
15	Bowers Seamount	54 9.00 N	174 52.20 E.
	Bowers Seamount	54 9.00 N	174 42.00 E.
	Bowers Seamount	54 4.20 N	174 42.00 E.
	Bowers Seamount	54 4.20 N	174 52.20 E.

Note: Each area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. Projected coordinate system is North American Datum 1983, Albers.

TABLE 23.—ALEUTIAN ISLANDS CORAL HABITAT PROTECTION AREAS

Area No.	Name	Latitude	Longitude
1	Great Sitkin Is	52 9.56 N	176 6.14 W.

TABLE 23.—ALEUTIAN ISLANDS CORAL HABITAT PROTECTION AREAS—Continued

Area No.	Name	Latitude	Longitude
	Great Sitkin Is	52 9.56 N	176 12.44 W.
	Great Sitkin Is	52 4.69 N	176 12.44 W.
	Great Sitkin Is	52 6.59 N	176 6.12 W.
2	Cape Moffett Is	52 0.11 N	176 46.65 W.
	Cape Moffett Is	52 0.10 N	176 53.00 W.
	Cape Moffett Is	51 55.69 N	176 53.00 W.
	Cape Moffett Is	51 55.69 N	176 48.59 W.
	Cape Moffett Is	51 57.96 N	176 46.52 W.
3	Adak Canyon	51 39.00 N	177 0.00 W.
	Adak Canyon	51 39.00 N	177 3.00 W.
	Adak Canyon	51 30.00 N	177 3.00 W.
	Adak Canyon	51 30.00 N	177 0.00 W.
4	Bobrof Is	51 57.35 N	177 19.94 W.
	Bobrof Is	51 57.36 N	177 29.11 W.
	Bobrof Is	51 51.65 N	177 29.11 W.
	Bobrof Is	51 51.71 N	177 19.93 W.
5	Ulak Is	51 25.85 N	178 59.00 W.
	Ulak Is	51 25.69 N	179 6.00 W.
	Ulak Is	51 22.28 N	179 6.00 W.
	Ulak Is	51 22.28 N	178 58.95 W.
6	Semisopochnoi Is	51 53.10 N	179 53.11 E.
	Semisopochnoi Is	51 53.10 N	179 46.55 E.
	Semisopochnoi Is	51 48.84 N	179 46.55 E.
	Semisopochnoi Is	51 48.89 N	179 53.11 E.

Note: Each area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. Projected coordinate system is North American Datum 1983, Albers.

TABLE 24.—EXCEPT AS NOTED, LOCATIONS IN THE ALEUTIAN ISLANDS HABITAT CONSERVATION AREA OPEN TO NONPELAGIC TRAWL FISHING

Area No.	Name	Latitude	Longitude	Footnote
1	Islands of 4 Mountains North	52 54.00 N	170 18.00 W.	
	Islands of 4 Mountains North	52 54.00 N	170 24.00 W.	
	Islands of 4 Mountains North	52 42.00 N	170 24.00 W.	
	Islands of 4 Mountains North	52 42.00 N	170 18.00 W.	
2	Islands of 4 Mountains West	53 12.00 N	170 0.00 W.	
	Islands of 4 Mountains West	53 12.00 N	170 12.00 W.	
	Islands of 4 Mountains West	53 6.00 N	170 12.00 W.	
	Islands of 4 Mountains West	53 6.00 N	170 30.00 W.	
	Islands of 4 Mountains West	53 0.00 N	170 30.00 W.	
	Islands of 4 Mountains West	53 0.00 N	170 48.00 W.	
	Islands of 4 Mountains West	52 54.00 N	170 48.00 W.	
	Islands of 4 Mountains West	52 54.00 N	170 54.00 W.	
	Islands of 4 Mountains West	52 48.00 N	170 54.00 W.	
	Islands of 4 Mountains West	52 48.00 N	170 30.00 W.	
	Islands of 4 Mountains West	52 54.00 N	170 30.00 W.	
	Islands of 4 Mountains West	52 54.00 N	170 24.00 W.	
	Islands of 4 Mountains West	53 0.00 N	170 24.00 W.	
	Islands of 4 Mountains West	53 0.00 N	170 0.00 W.	
3	Yunaska I South	52 24.00 N	170 30.00 W.	
	Yunaska I South	52 24.00 N	170 54.00 W.	
	Yunaska I South	52 12.00 N	170 54.00 W.	
	Yunaska I South	52 12.00 N	170 30.00 W.	
4	Amukta I North	52 54.00 N	171 6.00 W.	
	Amukta I North	52 54.00 N	171 30.00 W.	
	Amukta I North	52 48.00 N	171 30.00 W.	
	Amukta I North	52 48.00 N	171 36.00 W.	
	Amukta I North	52 42.00 N	171 36.00 W.	
	Amukta I North	52 42.00 N	171 12.00 W.	
	Amukta I North	52 48.00 N	171 12.00 W.	
	Amukta I North	52 48.00 N	171 16.00 W.	
5	Amukta Pass North	52 42.00 N	171 42.00 W.	
	Amukta Pass North	52 42.00 N	172 6.00 W.	
	Amukta Pass North	52 36.00 N	172 6.00 W.	
	Amukta Pass North	52 36.00 N	171 42.00 W.	
6	Amlia North/Seguam	52 42.00 N	172 12.00 W.	
	Amlia North/Seguam	52 42.00 N	172 30.00 W.	
	Amlia North/Seguam	52 30.00 N	172 30.00 W.	
	Amlia North/Seguam	52 30.00 N	172 36.00 W.	
	Amlia North/Seguam	52 36.00 N	172 36.00 W.	

TABLE 24.—EXCEPT AS NOTED, LOCATIONS IN THE ALEUTIAN ISLANDS HABITAT CONSERVATION AREA OPEN TO NONPELAGIC TRAWL FISHING—Continued

Area No.	Name	Latitude	Longitude	Footnote
	Amlia North/Seguam	52 36.00 N	172 42.00 W.	
	Amlia North/Seguam	52 39.00 N	172 42.00 W.	
	Amlia North/Seguam	52 39.00 N	173 24.00 W.	
	Amlia North/Seguam	52 36.00 N	173 30.00 W.	
	Amlia North/Seguam	52 36.00 N	173 36.00 W.	
	Amlia North/Seguam	52 30.00 N	173 36.00 W.	
	Amlia North/Seguam	52 30.00 N	174 0.00 W.	
	Amlia North/Seguam	52 27.00 N	174 0.00 W.	
	Amlia North/Seguam	52 27.00 N	174 6.00 W.	
	Amlia North/Seguam	52 23.93 N	174 6.00 W	1
	Amlia North/Seguam	52 13.71 N	174 6.00 W.	
	Amlia North/Seguam	52 12.00 N	174 6.00 W.	
	Amlia North/Seguam	52 12.00 N	174 0.00 W.	
	Amlia North/Seguam	52 9.00 N	174 0.00 W.	
	Amlia North/Seguam	52 9.00 N	173 0.00 W.	
	Amlia North/Seguam	52 6.00 N	173 0.00 W.	
	Amlia North/Seguam	52 6.00 N	172 45.00 W.	
	Amlia North/Seguam	51 54.00 N	172 45.00 W.	
	Amlia North/Seguam	51 54.00 N	171 48.00 W.	
	Amlia North/Seguam	51 48.00 N	171 48.00 W.	
	Amlia North/Seguam	51 48.00 N	171 42.00 W.	
	Amlia North/Seguam	51 54.00 N	171 42.00 W.	
	Amlia North/Seguam	52 12.00 N	171 42.00 W.	
	Amlia North/Seguam	52 12.00 N	171 48.00 W.	
	Amlia North/Seguam	52 18.00 N	171 48.00 W.	
	Amlia North/Seguam	52 18.00 N	171 42.00 W.	
	Amlia North/Seguam	52 30.00 N	171 42.00 W.	
	Amlia North/Seguam	52 30.00 N	171 54.00 W.	
	Amlia North/Seguam	52 24.00 N	171 54.00 W.	
	Amlia North/Seguam	52 24.00 N	172 0.00 W.	
	Amlia North/Seguam	52 12.00 N	172 0.00 W.	
	Amlia North/Seguam	52 12.00 N	172 42.00 W.	
	Amlia North/Seguam	52 18.00 N	172 42.00 W.	
	Amlia North/Seguam	52 18.00 N	172 37.13 W	2
	Amlia North/Seguam	52 18.64 N	172 36.00 W.	
	Amlia North/Seguam	52 24.00 N	172 36.00 W.	
	Amlia North/Seguam	52 24.00 N	172 12.00 W	6
	Amlia North/Seguam donut	52 33.00 N	172 42.00 W	5
	Amlia North/Seguam donut	52 33.00 N	173 6.00 W	5
	Amlia North/Seguam donut	52 30.00 N	173 6.00 W	5
	Amlia North/Seguam donut	52 30.00 N	173 18.00 W	5
	Amlia North/Seguam donut	52 24.00 N	173 18.00 W	5
	Amlia North/Seguam donut	52 24.00 N	172 48.00 W	5
	Amlia North/Seguam donut	52 30.00 N	172 48.00 W	5
	Amlia North/Seguam donut	52 30.00 N	172 42.00 W	5, 7
7	Atka/Amlia South	52 0.00 N	173 18.00 W.	
	Atka/Amlia South	52 0.00 N	173 54.00 W.	
	Atka/Amlia South	52 3.08 N	173 54.00 W	2
	Atka/Amlia South	52 6.00 N	173 58.00 W.	
	Atka/Amlia South	52 6.00 N	174 6.00 W.	
	Atka/Amlia South	52 0.00 N	174 18.00 W.	
	Atka/Amlia South	52 0.00 N	174 12.00 W.	
	Atka/Amlia South	51 54.00 N	174 12.00 W.	
	Atka/Amlia South	51 54.00 N	174 18.00 W.	
	Atka/Amlia South	52 6.00 N	174 18.00 W.	
	Atka/Amlia South	52 6.00 N	174 21.86 W	1
	Atka/Amlia South	52 4.39 N	174 30.00 W.	
	Atka/Amlia South	52 3.09 N	174 30.00 W	1
	Atka/Amlia South	52 2.58 N	174 30.00 W.	
	Atka/Amlia South	52 0.00 N	174 30.00 W.	
	Atka/Amlia South	52 0.00 N	174 36.00 W.	
	Atka/Amlia South	51 54.00 N	174 36.00 W.	
	Atka/Amlia South	51 54.00 N	174 54.00 W.	
	Atka/Amlia South	51 48.00 N	174 54.00 W.	
	Atka/Amlia South	51 48.00 N	173 24.00 W.	
	Atka/Amlia South	51 54.00 N	173 24.00 W.	
	Atka/Amlia South	51 54.00 N	173 18.00 W.	
8	Atka I North	52 30.00 N	174 24.00 W.	
	Atka I North	52 30.00 N	174 30.00 W.	
	Atka I North	52 24.00 N	174 30.00 W.	
	Atka I North	52 24.00 N	174 48.00 W.	

TABLE 24.—EXCEPT AS NOTED, LOCATIONS IN THE ALEUTIAN ISLANDS HABITAT CONSERVATION AREA OPEN TO NONPELAGIC TRAWL FISHING—Continued

Area No.	Name	Latitude	Longitude	Footnote
	Atka I North	52 18.00 N	174 48.00 W.	
	Atka I North	52 18.00 N	174 54.00 W.	
	Atka I North	52 12.00 N	174 54.00 W.	
	Atka I North	52 12.00 N	175 18.00 W.	
	Atka I North	52 1.14 N	175 18.00 W	1
	Atka I North	52 2.19 N	175 12.00 W.	
	Atka I North	52 6.00 N	175 12.00 W.	
	Atka I North	52 6.00 N	174 55.51 W	1
	Atka I North	52 6.00 N	174 54.04 W.	
	Atka I North	52 6.00 N	174 48.00 W.	
	Atka I North	52 12.00 N	174 48.00 W.	
	Atka I North	52 12.00 N	174 26.85 W	1
	Atka I North	52 12.94 N	174 18.00 W.	
	Atka I North	52 16.80 N	174 18.00 W	1
	Atka I North	52 17.06 N	174 18.00 W.	
	Atka I North	52 17.64 N	174 18.00 W	1
	Atka I North	52 18.00 N	174 19.12 W.	
	Atka I North	52 18.00 N	174 20.04 W	1
	Atka I North	52 19.37 N	174 24.00 W.	
9	Atka I South	52 0.68 N	175 12.00 W	2
	Atka I South	52 0.76 N	175 18.00 W.	
	Atka I South	52 0.00 N	175 18.00 W.	
	Atka I South	52 0.00 N	175 12.00 W.	
10	Adak I East	52 12.00 N	176 36.00 W.	
	Adak I East	52 12.00 N	176 0.00 W.	
	Adak I East	52 2.59 N	176 0.00 W	1
	Adak I East	52 1.79 N	176 0.00 W.	
	Adak I East	52 0.00 N	176 0.00 W.	
	Adak I East	52 0.00 N	175 48.00 W.	
	Adak I East	51 57.74 N	175 48.00 W	1
	Adak I East	51 55.48 N	175 48.00 W.	
	Adak I East	51 54.00 N	175 48.00 W.	
	Adak I East	51 54.00 N	176 0.00 W	1
	Adak I East	51 53.09 N	176 6.00 W.	
	Adak I East	51 51.40 N	176 6.00 W	1
	Adak I East	51 49.67 N	176 6.00 W.	
	Adak I East	51 48.73 N	176 6.00 W	1
	Adak I East	51 48.00 N	176 6.36 W.	
	Adak I East	51 48.00 N	176 9.82 W	1
	Adak I East	51 48.00 N	176 9.99 W.	
	Adak I East	51 48.00 N	176 16.19 W	1
	Adak I East	51 48.00 N	176 24.71 W.	
	Adak I East	51 48.00 N	176 25.71 W	1
	Adak I East	51 45.58 N	176 30.00 W.	
	Adak I East	51 42.00 N	176 30.00 W.	
	Adak I East	51 42.00 N	176 33.92 W	1
	Adak I East	51 41.22 N	176 42.00 W.	
	Adak I East	51 30.00 N	176 42.00 W.	
	Adak I East	51 30.00 N	176 36.00 W.	
	Adak I East	51 36.00 N	176 36.00 W.	
	Adak I East	51 36.00 N	176 0.00 W.	
	Adak I East	51 42.00 N	176 0.00 W.	
	Adak I East	51 42.00 N	175 36.00 W.	
	Adak I East	51 48.00 N	175 36.00 W.	
	Adak I East	51 48.00 N	175 18.00 W.	
	Adak I East	51 51.00 N	175 18.00 W.	
	Adak I East	51 51.00 N	175 0.00 W.	
	Adak I East	51 57.00 N	175 0.00 W.	
	Adak I East	51 57.00 N	175 18.00 W.	
	Adak I East	52 0.00 N	175 18.00 W.	
	Adak I East	52 0.00 N	175 30.00 W.	
	Adak I East	52 3.00 N	175 30.00 W.	
	Adak I East	52 3.00 N	175 36.00 W.	
11	Cape Adagdak	52 6.00 N	176 12.44 W.	
	Cape Adagdak	52 6.00 N	176 30.00 W.	
	Cape Adagdak	52 3.00 N	176 30.00 W.	
	Cape Adagdak	52 3.00 N	176 42.00 W.	
	Cape Adagdak	52 0.00 N	176 42.00 W.	
	Cape Adagdak	52 0.00 N	176 46.64 W.	
	Cape Adagdak	51 57.92 N	176 46.51 W	1
	Cape Adagdak	51 54.00 N	176 37.07 W.	

TABLE 24.—EXCEPT AS NOTED, LOCATIONS IN THE ALEUTIAN ISLANDS HABITAT CONSERVATION AREA OPEN TO NONPELAGIC TRAWL FISHING—Continued

Area No.	Name	Latitude	Longitude	Footnote
	Cape Adagdak	51 54.00 N	176 18.00 W.	
	Cape Adagdak	52 0.00 N	176 18.00 W.	
	Cape Adagdak	52 0.00 N	176 12.00 W.	
	Cape Adagdak	52 2.85 N	176 12.00 W	1
	Cape Adagdak	52 4.69 N	176 12.44 W.	
12	Cape Kiguga/Round Head	52 0.00 N	176 53.00 W.	
	Cape Kiguga/Round Head	52 0.00 N	177 6.00 W.	
	Cape Kiguga/Round Head	51 56.06 N	177 6.00 W	1
	Cape Kiguga/Round Head	51 54.00 N	177 2.84 W.	
	Cape Kiguga/Round Head	51 54.00 N	176 54.00 W.	
	Cape Kiguga/Round Head	51 48.79 N	176 54.00 W	1
	Cape Kiguga/Round Head	51 48.00 N	176 50.35 W.	
	Cape Kiguga/Round Head	51 48.00 N	176 43.14 W	1
	Cape Kiguga/Round Head	51 55.69 N	176 48.59 W.	
	Cape Kiguga/Round Head	51 55.69 N	176 53.00 W.	
13	Adak Strait South	51 42.00 N	176 55.77 W.	
	Adak Strait South	51 42.00 N	177 12.00 W.	
	Adak Strait South	51 30.00 N	177 12.00 W.	
	Adak Strait South	51 36.00 N	177 6.00 W.	
	Adak Strait South	51 36.00 N	177 3.00 W.	
	Adak Strait South	51 39.00 N	177 3.00 W.	
	Adak Strait South	51 39.00 N	177 0.00 W.	
	Adak Strait South	51 36.00 N	177 0.00 W.	
	Adak Strait South	51 36.00 N	176 57.72 W	3
14	Bay of Waterfalls	51 38.62 N	176 54.00 W.	
	Bay of Waterfalls	51 36.00 N	176 54.00 W.	
	Bay of Waterfalls	51 36.00 N	176 55.99 W	3
15	Tanaga/Kanaga North	51 54.00 N	177 12.00 W.	
	Tanaga/Kanaga North	51 54.00 N	177 19.93 W.	
	Tanaga/Kanaga North	51 51.71 N	177 19.93 W.	
	Tanaga/Kanaga North	51 51.65 N	177 29.11 W.	
	Tanaga/Kanaga North	51 54.00 N	177 29.11 W.	
	Tanaga/Kanaga North	51 54.00 N	177 30.00 W.	
	Tanaga/Kanaga North	51 57.00 N	177 30.00 W.	
	Tanaga/Kanaga North	51 57.00 N	177 42.00 W.	
	Tanaga/Kanaga North	51 54.00 N	177 42.00 W.	
	Tanaga/Kanaga North	51 54.00 N	177 54.00 W.	
	Tanaga/Kanaga North	51 50.92 N	177 54.00 W	1
	Tanaga/Kanaga North	51 48.00 N	177 46.44 W.	
	Tanaga/Kanaga North	51 48.00 N	177 42.00 W.	
	Tanaga/Kanaga North	51 42.59 N	177 42.00 W	1
	Tanaga/Kanaga North	51 45.57 N	177 24.01 W.	
	Tanaga/Kanaga North	51 48.00 N	177 24.00 W.	
	Tanaga/Kanaga North	51 48.00 N	177 14.08 W	4
16	Tanaga/Kanaga South	51 43.78 N	177 24.04 W	1
	Tanaga/Kanaga South	51 42.37 N	177 42.00 W.	
	Tanaga/Kanaga South	51 42.00 N	177 42.00 W.	
	Tanaga/Kanaga South	51 42.00 N	177 50.04 W	1
	Tanaga/Kanaga South	51 40.91 N	177 54.00 W.	
	Tanaga/Kanaga South	51 36.00 N	177 54.00 W.	
	Tanaga/Kanaga South	51 36.00 N	178 0.00 W.	
	Tanaga/Kanaga South	51 38.62 N	178 0.00 W	1
	Tanaga/Kanaga South	51 42.52 N	178 6.00 W.	
	Tanaga/Kanaga South	51 49.34 N	178 6.00 W	1
	Tanaga/Kanaga South	51 51.35 N	178 12.00 W.	
	Tanaga/Kanaga South	51 48.00 N	178 12.00 W.	
	Tanaga/Kanaga South	51 48.00 N	178 30.00 W.	
	Tanaga/Kanaga South	51 42.00 N	178 30.00 W.	
	Tanaga/Kanaga South	51 42.00 N	178 36.00 W.	
	Tanaga/Kanaga South	51 36.26 N	178 36.00 W	1
	Tanaga/Kanaga South	51 35.75 N	178 36.00 W.	
	Tanaga/Kanaga South	51 27.00 N	178 36.00 W.	
	Tanaga/Kanaga South	51 27.00 N	178 42.00 W.	
	Tanaga/Kanaga South	51 21.00 N	178 42.00 W.	
	Tanaga/Kanaga South	51 21.00 N	178 24.00 W.	
	Tanaga/Kanaga South	51 24.00 N	178 24.00 W.	
	Tanaga/Kanaga South	51 24.00 N	178 12.00 W.	
	Tanaga/Kanaga South	51 30.00 N	178 12.00 W.	
	Tanaga/Kanaga South	51 30.00 N	177 24.00 W.	
17	Amchitka Pass East	51 42.00 N	178 48.00 W.	
	Amchitka Pass East	51 42.00 N	179 18.00 W.	

TABLE 24.—EXCEPT AS NOTED, LOCATIONS IN THE ALEUTIAN ISLANDS HABITAT CONSERVATION AREA OPEN TO NONPELAGIC TRAWL FISHING—Continued

Area No.	Name	Latitude	Longitude	Footnote
	Amchitka Pass East	51 45.00 N	179 18.00 W.	
	Amchitka Pass East	51 45.00 N	179 36.00 W.	
	Amchitka Pass East	51 42.00 N	179 36.00 W.	
	Amchitka Pass East	51 42.00 N	179 39.00 W.	
	Amchitka Pass East	51 30.00 N	179 39.00 W.	
	Amchitka Pass East	51 30.00 N	179 36.00 W.	
	Amchitka Pass East	51 18.00 N	179 36.00 W.	
	Amchitka Pass East	51 18.00 N	179 24.00 W.	
	Amchitka Pass East	51 30.00 N	179 24.00 W.	
	Amchitka Pass East	51 30.00 N	179 0.00 W.	
	Amchitka Pass East	51 25.82 N	179 0.00 W.	
	Amchitka Pass East	51 25.85 N	178 59.00 W.	
	Amchitka Pass East	51 24.00 N	178 58.97 W.	
	Amchitka Pass East	51 24.00 N	178 54.00 W.	
	Amchitka Pass East	51 30.00 N	178 54.00 W.	
	Amchitka Pass East	51 30.00 N	178 48.00 W.	
	Amchitka Pass East	51 32.69 N	178 48.00 W	1
	Amchitka Pass East	51 33.95 N	178 48.00 W.	
18	Amatignak I	51 18.00 N	178 54.00 W.	
	Amatignak I	51 18.00 N	179 5.30 W	1
	Amatignak I	51 18.00 N	179 6.75 W.	
	Amatignak I	51 18.00 N	179 12.00 W.	
	Amatignak I	51 6.00 N	179 12.00 W.	
	Amatignak I	51 6.00 N	179 0.00 W.	
	Amatignak I	51 12.00 N	179 0.00 W.	
	Amatignak I	51 12.00 N	178 54.00 W.	
19	Amchitka Pass Center	51 30.00 N	179 48.00 W.	
	Amchitka Pass Center	51 30.00 N	180 0.00 W.	
	Amchitka Pass Center	51 24.00 N	180 0.00 W.	
	Amchitka Pass Center	51 24.00 N	179 48.00 W.	
20	Amchitka Pass West	51 36.00 N	179 54.00 E.	
	Amchitka Pass West	51 36.00 N	179 36.00 E.	
	Amchitka Pass West	51 30.00 N	179 36.00 E.	
	Amchitka Pass West	51 30.00 N	179 45.00 E.	
	Amchitka Pass West	51 27.00 N	179 48.00 E.	
	Amchitka Pass West	51 24.00 N	179 48.00 E.	
	Amchitka Pass West	51 24.00 N	179 54.00 E.	
21	Petrel Bank	52 51.00 N	179 12.00 W.	
	Petrel Bank	52 51.00 N	179 24.00 W.	
	Petrel Bank	52 48.00 N	179 24.00 W.	
	Petrel Bank	52 48.00 N	179 30.00 W.	
	Petrel Bank	52 42.00 N	179 30.00 W.	
	Petrel Bank	52 42.00 N	179 36.00 W.	
	Petrel Bank	52 36.00 N	179 36.00 W.	
	Petrel Bank	52 36.00 N	179 48.00 W.	
	Petrel Bank	52 30.00 N	179 48.00 W.	
	Petrel Bank	52 30.00 N	179 42.00 E.	
	Petrel Bank	52 24.00 N	179 42.00 E.	
	Petrel Bank	52 24.00 N	179 36.00 E.	
	Petrel Bank	52 12.00 N	179 36.00 E.	
	Petrel Bank	52 12.00 N	179 36.00 W.	
	Petrel Bank	52 24.00 N	179 36.00 W.	
	Petrel Bank	52 24.00 N	179 30.00 W.	
	Petrel Bank	52 30.00 N	179 30.00 W.	
	Petrel Bank	52 30.00 N	179 24.00 W.	
	Petrel Bank	52 36.00 N	179 24.00 W.	
	Petrel Bank	52 36.00 N	179 18.00 W.	
	Petrel Bank	52 42.00 N	179 18.00 W.	
	Petrel Bank	52 42.00 N	179 12.00 W.	
22	Rat I/Amchitka I South	51 21.00 N	179 36.00 E.	
	Rat I/Amchitka I South	51 21.00 N	179 18.00 E.	
	Rat I/Amchitka I South	51 18.00 N	179 18.00 E.	
	Rat I/Amchitka I South	51 18.00 N	179 12.00 E.	
	Rat I/Amchitka I South	51 23.77 N	179 12.00 E	1
	Rat I/Amchitka I South	51 24.00 N	179 10.20 E.	
	Rat I/Amchitka I South	51 24.00 N	179 0.00 E.	
	Rat I/Amchitka I South	51 36.00 N	178 36.00 E.	
	Rat I/Amchitka I South	51 36.00 N	178 24.00 E.	
	Rat I/Amchitka I South	51 42.00 N	178 24.00 E.	
	Rat I/Amchitka I South	51 42.00 N	178 6.00 E.	
	Rat I/Amchitka I South	51 48.00 N	178 6.00 E.	

TABLE 24.—EXCEPT AS NOTED, LOCATIONS IN THE ALEUTIAN ISLANDS HABITAT CONSERVATION AREA OPEN TO NONPELAGIC TRAWL FISHING—Continued

Area No.	Name	Latitude	Longitude	Footnote
	Rat I/Amchitka I South	51 48.00 N	177 54.00 E.	
	Rat I/Amchitka I South	51 54.00 N	177 54.00 E.	
	Rat I/Amchitka I South	51 54.00 N	178 12.00 E.	
	Rat I/Amchitka I South	51 48.00 N	178 12.00 E.	
	Rat I/Amchitka I South	51 48.00 N	178 17.09 E	1
	Rat I/Amchitka I South	51 48.00 N	178 20.60 E.	
	Rat I/Amchitka I South	51 48.00 N	178 24.00 E.	
	Rat I/Amchitka I South	52 6.00 N	178 24.00 E.	
	Rat I/Amchitka I South	52 6.00 N	178 12.00 E.	
	Rat I/Amchitka I South	52 0.00 N	178 12.00 E.	
	Rat I/Amchitka I South	52 0.00 N	178 11.01 E	1
	Rat I/Amchitka I South	52 0.00 N	178 5.99 E.	
	Rat I/Amchitka I South	52 0.00 N	177 54.00 E.	
	Rat I/Amchitka I South	52 9.00 N	177 54.00 E.	
	Rat I/Amchitka I South	52 9.00 N	177 42.00 E.	
	Rat I/Amchitka I South	52 0.00 N	177 42.00 E.	
	Rat I/Amchitka I South	52 0.00 N	177 48.00 E.	
	Rat I/Amchitka I South	51 54.00 N	177 48.00 E.	
	Rat I/Amchitka I South	51 54.00 N	177 30.00 E.	
	Rat I/Amchitka I South	51 51.00 N	177 30.00 E.	
	Rat I/Amchitka I South	51 51.00 N	177 24.00 E.	
	Rat I/Amchitka I South	51 45.00 N	177 24.00 E.	
	Rat I/Amchitka I South	51 45.00 N	177 30.00 E.	
	Rat I/Amchitka I South	51 48.00 N	177 30.00 E.	
	Rat I/Amchitka I South	51 48.00 N	177 42.00 E.	
	Rat I/Amchitka I South	51 42.00 N	177 42.00 E.	
	Rat I/Amchitka I South	51 42.00 N	178 0.00 E.	
	Rat I/Amchitka I South	51 39.00 N	178 0.00 E.	
	Rat I/Amchitka I South	51 39.00 N	178 12.00 E.	
	Rat I/Amchitka I South	51 36.00 N	178 12.00 E.	
	Rat I/Amchitka I South	51 36.00 N	178 18.00 E.	
	Rat I/Amchitka I South	51 30.00 N	178 18.00 E.	
	Rat I/Amchitka I South	51 30.00 N	178 24.00 E.	
	Rat I/Amchitka I South	51 24.00 N	178 24.00 E.	
	Rat I/Amchitka I South	51 24.00 N	178 36.00 E.	
	Rat I/Amchitka I South	51 30.00 N	178 36.00 E.	
	Rat I/Amchitka I South	51 24.00 N	178 48.00 E.	
	Rat I/Amchitka I South	51 18.00 N	178 48.00 E.	
	Rat I/Amchitka I South	51 18.00 N	178 54.00 E.	
	Rat I/Amchitka I South	51 12.00 N	178 54.00 E.	
	Rat I/Amchitka I South	51 12.00 N	179 30.00 E.	
	Rat I/Amchitka I South	51 18.00 N	179 30.00 E.	
	Rat I/Amchitka I South	51 18.00 N	179 36.00 E.	
23	Amchitka I North	51 42.00 N	179 12.00 E.	
	Amchitka I North	51 42.00 N	178 57.00 E.	
	Amchitka I North	51 36.00 N	178 56.99 E.	
	Amchitka I North	51 36.00 N	179 0.00 E.	
	Amchitka I North	51 33.62 N	179 0.00 E	2
	Amchitka I North	51 30.00 N	179 5.00 E.	
	Amchitka I North	51 30.00 N	179 18.00 E.	
	Amchitka I North	51 36.00 N	179 18.00 E.	
	Amchitka I North	51 36.00 N	179 12.00 E.	
24	Pillar Rk	52 9.00 N	177 30.00 E.	
	Pillar Rk	52 9.00 N	177 18.00 E.	
	Pillar Rk	52 6.00 N	177 18.00 E.	
	Pillar Rk	52 6.00 N	177 30.00 E.	
25	Murray Canyon	51 48.00 N	177 12.00 E.	
	Murray Canyon	51 48.00 N	176 48.00 E.	
	Murray Canyon	51 36.00 N	176 48.00 E.	
	Murray Canyon	51 36.00 N	177 0.00 E.	
	Murray Canyon	51 39.00 N	177 0.00 E.	
	Murray Canyon	51 39.00 N	177 6.00 E.	
	Murray Canyon	51 42.00 N	177 6.00 E.	
	Murray Canyon	51 42.00 N	177 12.00 E.	
26	Buldir	52 6.00 N	177 12.00 E.	
	Buldir	52 6.00 N	177 0.01 E.	
	Buldir	52 6.00 N	177 0.00 E.	
	Buldir	52 12.00 N	177 0.00 E.	
	Buldir	52 12.00 N	176 54.00 E.	
	Buldir	52 9.00 N	176 54.00 E.	
	Buldir	52 9.00 N	176 48.00 E.	

TABLE 24.—EXCEPT AS NOTED, LOCATIONS IN THE ALEUTIAN ISLANDS HABITAT CONSERVATION AREA OPEN TO NONPELAGIC TRAWL FISHING—Continued

Area No.	Name	Latitude	Longitude	Footnote
	Buldir	52 0.00 N	176 48.00 E.	
	Buldir	52 0.00 N	176 36.00 E.	
	Buldir	52 6.00 N	176 36.00 E.	
	Buldir	52 6.00 N	176 24.00 E.	
	Buldir	52 12.00 N	176 24.00 E.	
	Buldir	52 12.00 N	176 12.00 E.	
	Buldir	52 18.00 N	176 12.00 E.	
	Buldir	52 18.00 N	176 30.00 E.	
	Buldir	52 24.00 N	176 30.00 E.	
	Buldir	52 24.00 N	176 0.00 E.	
	Buldir	52 18.00 N	176 0.00 E.	
	Buldir	52 18.00 N	175 54.00 E.	
	Buldir	52 20.79 N	175 54.00 E	1
	Buldir	52 22.38 N	175 54.00 E.	
	Buldir	52 24.00 N	175 54.00 E.	
	Buldir	52 24.00 N	175 48.00 E.	
	Buldir	52 30.00 N	175 48.00 E.	
	Buldir	52 30.00 N	175 36.00 E.	
	Buldir	52 36.00 N	175 36.00 E.	
	Buldir	52 36.00 N	175 24.00 E.	
	Buldir	52 24.00 N	175 24.00 E.	
	Buldir	52 24.00 N	175 30.00 E.	
	Buldir	52 18.00 N	175 30.00 E.	
	Buldir	52 18.00 N	175 36.00 E.	
	Buldir	52 24.00 N	175 36.00 E.	
	Buldir	52 24.00 N	175 42.00 E.	
	Buldir	52 12.00 N	175 54.00 E.	
	Buldir	52 6.00 N	175 54.00 E.	
	Buldir	52 6.00 N	175 48.00 E.	
	Buldir	52 0.00 N	175 48.00 E.	
	Buldir	52 0.00 N	175 54.00 E.	
	Buldir	51 54.00 N	175 54.00 E.	
	Buldir	51 54.00 N	175 36.00 E.	
	Buldir	51 42.00 N	175 36.00 E.	
	Buldir	51 42.00 N	175 30.00 E.	
	Buldir	51 36.00 N	175 30.00 E.	
	Buldir	51 36.00 N	175 36.00 E.	
	Buldir	51 30.00 N	175 36.00 E.	
	Buldir	51 30.00 N	175 42.00 E.	
	Buldir	51 36.00 N	175 42.00 E.	
	Buldir	51 36.00 N	176 0.00 E.	
	Buldir	52 0.00 N	176 0.00 E.	
	Buldir	52 0.00 N	176 6.00 E.	
	Buldir	52 6.00 N	176 6.00 E.	
	Buldir	52 6.00 N	176 12.00 E.	
	Buldir	52 0.00 N	176 12.00 E.	
	Buldir	52 0.00 N	176 30.00 E.	
	Buldir	51 54.00 N	176 30.00 E.	
	Buldir	51 54.00 N	177 0.00 E.	
	Buldir	52 0.00 N	177 0.00 E.	
	Buldir	52 0.00 N	177 0.01 E.	
	Buldir	52 0.00 N	177 12.00 E	6
	Buldir donut	51 48.00 N	175 48.00 E	5
	Buldir donut	51 48.00 N	175 42.00 E	5
	Buldir donut	51 45.00 N	175 42.00 E	5
	Buldir donut	51 45.00 N	175 48.00 E	5, 7
27	Buldir Mound	51 54.00 N	176 24.00 E.	
	Buldir Mound	51 54.00 N	176 18.00 E.	
	Buldir Mound	51 48.00 N	176 18.00 E.	
	Buldir Mound	51 48.00 N	176 24.00 E.	
28	Tahoma Canyon	52 0.00 N	175 18.00 E.	
	Tahoma Canyon	52 0.00 N	175 12.00 E.	
	Tahoma Canyon	51 42.00 N	175 12.00 E.	
	Tahoma Canyon	51 42.00 N	175 24.00 E.	
	Tahoma Canyon	51 54.00 N	175 24.00 E.	
	Tahoma Canyon	51 54.00 N	175 18.00 E.	
29	Walls Plateau	52 24.00 N	175 24.00 E.	
	Walls Plateau	52 24.00 N	175 12.00 E.	
	Walls Plateau	52 18.00 N	175 12.00 E.	
	Walls Plateau	52 18.00 N	175 0.00 E.	
	Walls Plateau	52 12.00 N	175 0.00 E.	

TABLE 24.—EXCEPT AS NOTED, LOCATIONS IN THE ALEUTIAN ISLANDS HABITAT CONSERVATION AREA OPEN TO NONPELAGIC TRAWL FISHING—Continued

Area No.	Name	Latitude	Longitude	Footnote
	Walls Plateau	52 12.00 N	174 42.00 E.	
	Walls Plateau	52 6.00 N	174 42.00 E.	
	Walls Plateau	52 6.00 N	174 36.00 E.	
	Walls Plateau	52 0.00 N	174 36.00 E.	
	Walls Plateau	52 0.00 N	174 42.00 E.	
	Walls Plateau	51 54.00 N	174 42.00 E.	
	Walls Plateau	51 54.00 N	174 48.00 E.	
	Walls Plateau	52 0.00 N	174 48.00 E.	
	Walls Plateau	52 0.00 N	174 54.00 E.	
	Walls Plateau	52 6.00 N	174 54.00 E.	
	Walls Plateau	52 6.00 N	175 18.00 E.	
	Walls Plateau	52 12.00 N	175 24.00 E.	
30	Semichi I	52 30.00 N	175 6.00 E.	
	Semichi I	52 30.00 N	175 0.00 E.	
	Semichi I	52 36.00 N	175 0.00 E.	
	Semichi I	52 36.00 N	174 48.00 E.	
	Semichi I	52 42.00 N	174 48.00 E.	
	Semichi I	52 42.00 N	174 33.00 E.	
	Semichi I	52 36.00 N	174 33.00 E.	
	Semichi I	52 36.00 N	174 24.00 E.	
	Semichi I	52 39.00 N	174 24.00 E.	
	Semichi I	52 39.00 N	174 0.00 E.	
	Semichi I	52 42.00 N	173 54.00 E.	
	Semichi I	52 45.16 N	173 54.00 E	1
	Semichi I	52 46.35 N	173 54.00 E.	
	Semichi I	52 54.00 N	173 54.00 E.	
	Semichi I	52 54.00 N	173 30.00 E.	
	Semichi I	52 48.00 N	173 30.00 E.	
	Semichi I	52 48.00 N	173 36.00 E.	
	Semichi I	52 36.00 N	173 36.00 E.	
	Semichi I	52 36.00 N	173 54.00 E.	
	Semichi I	52 18.00 N	173 54.00 E.	
	Semichi I	52 18.00 N	174 30.00 E.	
	Semichi I	52 30.00 N	174 30.00 E.	
	Semichi I	52 30.00 N	174 48.00 E.	
	Semichi I	52 24.00 N	174 48.00 E.	
	Semichi I	52 24.00 N	175 6.00 E.	
31	Agattu South	52 18.00 N	173 54.00 E.	
	Agattu South	52 18.00 N	173 24.00 E.	
	Agattu South	52 9.00 N	173 24.00 E.	
	Agattu South	52 9.00 N	173 36.00 E.	
	Agattu South	52 6.00 N	173 36.00 E.	
	Agattu South	52 6.00 N	173 54.00 E.	
32	Attu I North	53 3.00 N	173 24.00 E.	
	Attu I North	53 3.00 N	173 6.00 E.	
	Attu I North	53 0.00 N	173 6.00 E.	
	Attu I North	53 0.00 N	173 24.00 E.	
33	Attu I West	52 54.00 N	172 12.00 E.	
	Attu I West	52 54.00 N	172 0.00 E.	
	Attu I West	52 48.00 N	172 0.00 E.	
	Attu I West	52 48.00 N	172 12.00 E.	
34	Stalemate Bank	53 0.00 N	171 6.00 E.	
	Stalemate Bank	53 0.00 N	170 42.00 E.	
	Stalemate Bank	52 54.00 N	170 42.00 E.	
	Stalemate Bank	52 54.00 N	171 6.00 E.	

Note: Unless otherwise footnoted, each area is delineated by connecting in order the coordinates listed by straight lines. Except for the Amlia North/Seguam donut and the Buldir donut, each area delineated in the table is open to nonpelagic trawl gear fishing. The remainder of the entire Aleutian Islands subarea and the areas delineated by the coordinates for the Amlia North/Seguam and Buldir donuts are closed to nonpelagic trawl gear fishing, as specified at § 679.22. Unless otherwise noted, the last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

[1] The connection of these coordinates to the next set of coordinates is by a line extending in a clockwise direction from these coordinates along the shoreline at mean lower-low water to the next set of coordinates.

[2] The connection of these coordinates to the next set of coordinates is by a line extending in a counter clockwise direction from these coordinates along the shoreline at mean lower-low water to the next set of coordinates.

[3] The connection of these coordinates to the first set of coordinates for this area is by a line extending in a clockwise direction from these coordinates along the shoreline at mean lower-low water to the first set of coordinates.

[4] The connection of these coordinates to the first set of coordinates for this area is by a line extending in a counter clockwise direction from these coordinates along the shoreline at mean lower-low water to the first set of coordinates.

[5] The area specified by this set of coordinates is closed to fishing with non-pelagic trawl gear.

[6] This set of coordinates is connected to the first set of coordinates listed for the area by a straight line.

[7] The last coordinate for the donut is connected to the first set of coordinates for the donut by a straight line.

TABLE 25.—BOWERS RIDGE HABITAT CONSERVATION ZONE

Area No.	Name	Latitude	Longitude
1	Bowers Ridge	55 10.50N	178 27.25 E.
	Bowers Ridge	54 54.50N	177 55.75 E.
	Bowers Ridge	54 5.83N	179 20.75 E.
	Bowers Ridge	52 40.50N	179 55.00 W.
	Bowers Ridge	52 44.50N	179 26.50 W.
	Bowers Ridge	54 15.50N	179 54.00 W.
2	Ulm Plateau	5 5.00N	177 15.00 E.
	Ulm Plateau	55 5.00N	175 60.00 E.
	Ulm Plateau	54 34.00N	175 60.00 E.
	Ulm Plateau	54 34.00N	177 15.00 E.

Note: Each area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. Projected coordinate system is North American Datum 1983, Albers.

TABLE 26.—GULF OF ALASKA CORAL HABITAT PROTECTION AREAS

Area No.	Name	Latitude	Longitude
1	Cape Ommaney 1	56 10.85 N	135 5.83 W.
	Cape Ommaney 1	56 11.18 N	135 7.17 W.
	Cape Ommaney 1	56 9.53 N	135 7.68 W.
	Cape Ommaney 1	56 9.52 N	135 7.20 W.
2	Fariweather FS2	58 15.00 N	138 52.58 W.
	Fariweather FS2	58 15.00 N	138 54.08 W.
	Fariweather FS2	58 13.92 N	138 54.08 W.
	Fariweather FS2	58 13.92 N	138 52.58 W.
3	Fariweather FS1	58 16.00 N	138 59.25 W.
	Fariweather FS1	58 16.00 N	139 9.75 W.
	Fariweather FS1	58 13.17 N	138 59.25 W.
4	Fairweather FN2	58 24.10 N	139 14.58 W.
	Fairweather FN2	58 24.10 N	139 18.50 W.
	Fairweather FN2	58 22.55 N	139 18.50 W.
	Fairweather FN2	58 22.55 N	139 14.58 W.
5	Fairweather FN1	58 27.42 N	139 17.75 W.
	Fairweather FN1	58 27.42 N	139 19.08 W.
	Fairweather FN1	58 26.32 N	139 19.08 W.
	Fairweather FN1	58 26.32 N	139 17.75 W.

Note: Each area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. Projected coordinate system is North American Datum 1983, Albers.

TABLE 27.—GULF OF ALASKA SLOPE HABITAT CONSERVATION AREAS

Area No.	Name	Latitude	Longitude
1	Yakutat	58 47.00 N	139 55.00 W.
	Yakutat	58 47.00 N	140 32.00 W.
	Yakutat	58 37.00 N	140 32.00 W.
	Yakutat	58 36.97 N	139 54.99 W.
2	Cape Suckling	59 50.00 N	143 20.00 W.
	Cape Suckling	59 50.00 N	143 30.00 W.
	Cape Suckling	59 40.00 N	143 30.00 W.
	Cape Suckling	59 40.00 N	143 20.00 W.
3	Kayak Is	59 35.00 N	144 0.00 W.
	Kayak Is	59 40.00 N	144 25.00 W.
	Kayak Is	59 30.00 N	144 50.00 W.
	Kayak Is	59 25.00 N	144 50.00 W.
	Kayak Is	59 25.00 N	144 2.00 W.
4	Middleton Is east	59 32.31 N	145 29.09 W.
	Middleton Is east	59 32.13 N	145 51.14 W.
	Middleton Is east	59 20.00 N	145 51.00 W.
	Middleton Is east	59 18.85 N	145 29.39 W.
5	Middleton Is west	59 14.64 N	146 29.63 W.
	Middleton Is west	59 15.00 N	147 0.00 W.
	Middleton Is west	59 10.00 N	147 0.00 W.
	Middleton Is west	59 8.74 N	146 30.16 W.
6	Cable	58 40.00 N	148 0.00 W.
	Cable	59 6.28 N	149 0.28 W.
	Cable	59 0.00 N	149 0.00 W.
	Cable	58 34.91 N	147 59.85 W.
7	Albatross Bank	56 16.00 N	152 40.00 W.
	Albatross Bank	56 16.00 N	153 20.00 W.

TABLE 27.—GULF OF ALASKA SLOPE HABITAT CONSERVATION AREAS—Continued

Area No.	Name	Latitude	Longitude
	Albatross Bank	56 11.00 N	153 20.00 W.
	Albatross Bank	56 10.00 N	152 40.00 W.
8	Shumagin Is	54 51.49 N	157 42.52 W.
	Shumagin Is	54 40.00 N	158 10.00 W.
	Shumagin Is	54 35.00 N	158 10.00 W.
	Shumagin Is	54 36.00 N	157 42.00 W.
9	Sanak Is	54 12.86 N	162 13.54 W.
	Sanak Is	54 0.00 N	163 15.00 W.
	Sanak Is	53 53.00 N	163 15.00 W.
	Sanak Is	54 5.00 N	162 12.00 W.
10	Unalaska Is	53 26.05 N	165 55.55 W.
	Unalaska Is	53 6.92 N	167 19.40 W.
	Unalaska Is	52 55.71 N	167 18.20 W.
	Unalaska Is	53 13.05 N	165 55.55 W.

Note: Each area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. Projected coordinate system is North American Datum 1983, Albers.

[FR Doc. 06–2706 Filed 3–21–06; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 71, No. 55
Wednesday, March 22, 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

Agricultural Marketing Service

[Docket No. FV–06–337]

United States Standards for Grades of Canned Fruits for Salad, and United States Standards for Grades of Canned Fruit Cocktail

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; correction.

SUMMARY: The United States Standards for Grades of Canned Fruits for Salad, and United States Standards for Grades of Canned Fruit Cocktail are revised to reflect the change in the character classification for Grade ''B'' canned pears made previously in the United States Standards for Grades of Canned Pears.

DATES: Effective April 21, 2006.

Amendment for Character Classification

A Notice was published in the **Federal Register**, (69 FR 63612) dated October 29, 2004, revising the United States Standards for Grades of Canned Pears, issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) effective November 29, 2004. This change affected the character classification for Grade ''B'' slices and diced for canned pears to read ''the units are reasonably tender or tenderness may be variable within the unit.'' A conforming change to the United States Standard for Grades of Canned Fruits for Salad and the United States Standards for Grades of Canned Fruit Cocktail should have been changed in this regard.

Accordingly, the Notice published in the **Federal Register** on October 29, 2004, at 69 FR 63612 is corrected by adding a conforming change to provide that the Grade ''B'' character classification of canned pears for the United States Standards for Grades of Canned Fruits for Salad and United States Standards for Grades of Canned Fruit Cocktail is changed by adding the statement ''the units are reasonably tender or tenderness may be variable within the unit.'' This change will affect section 52.3843 Character(c)(3) of the Canned Fruits for Salads and section 52.1063 Character (c)(2) of the Canned Fruit Cocktail.

Revised copies of the U.S. grade standards are located on the Web site at *http://www.ams.usda.gov/fv/ppb.html* and are available from Inspection and Standardization Section, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 0709, South Building; STOP 0247, Washington, DC 20250; telephone: (202) 720–5021 or fax (202) 690–1527.

FOR FURTHER INFORMATION CONTACT: Karen L. Kaufman, (202) 720–5021, or e-mail *karen.kaufman@usda.gov.*

Authority: 7 U.S.C. 1621–1627.

Dated: March 17, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–4157 Filed 3–21–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. TM–06–07]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: The meeting dates are Wednesday, April 19, 2006, 1 p.m. to 5 p.m.; and Thursday, April 20, 2006, 8 a.m. to 5:30 p.m. Requests from individuals and organizations wishing to make an oral presentation at the meeting are due by the close of business on April 7, 2006.

ADDRESSES: The meeting will take place at the Ramada Conference Center, 1450 South Atherton Street, State College, PA. Requests for copies of the NOSB meeting agenda, requests to make an oral presentation at the meeting, or written comments may be sent to Ms. Katherine Benham at USDA–AMS–TMD–NOP, 1400 Independence Avenue, SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250–0200. Requests to make an oral presentation at the meeting may also be sent via facsimile to Ms. Katherine Benham at (202) 205–7808 or electronically to Ms. Katherine Benham at *Katherine.benham@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine E. Benham, Advisory Board Specialist, National Organic Program, (202) 205–7806.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in organic production, and to advise the Secretary on other aspects of the implementation of the OFPA. The NOSB met for the first time in Washington, DC, in March 1992, and currently has six committees working on various aspects of the organic program. The committees are: Compliance, Accreditation, and Certification; Crops; Livestock; Materials; Handling; and Policy Development.

In August of 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture. Since that time, the NOSB has submitted 99 addenda to its recommendations and reviewed more than 269 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held on November 16–17, 2005, in Washington, DC.

The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000, (65 FR 80548). The rule became effective April 21, 2001.

The principal purposes of the meeting are to provide an opportunity for the NOSB to receive an update from the USDA/NOP and hear progress reports from NOSB committees regarding work plan items and proposed action items. The NOSB will receive presentations from the Aquaculture Working Group and Pet Food Task Force. The NOSB subcommittees (Crops, Livestock, and Handling Committees) will also present for, full NOSB consideration, recommendations concerning the continued use or prohibition of 29 substances being reviewed under the OFPA's sunset provisions for the National List. The NOSB will vote on these recommendations.

The OFPA authorized a National List of Allowed and Prohibited Substances. The Act also provides that no allowed or prohibited substance would remain on the National List for a period exceeding 5 years unless the exemption or prohibition is reviewed and recommended for renewal by the NOSB and adopted by the Secretary of Agriculture. This expiration is commonly referred to as sunset of the National List. The National List was implemented on October 21, 2002, and contained over 170 substances. This first sunset of the National List triggers a review process that must be concluded no later than October 21, 2007. If renewal is not concluded by that date, the use or prohibition of hundreds of materials will no longer be valid for the organic industry, causing most if not all of the organic industry to be in noncompliance with the National Organic Standards. Because this first sunset process involves Federal rulemaking, the NOSB and the NOP has issued guidance and begun work on the National List Sunset process in order to avoid expiration of the National List on October 21, 2007. At its November 16–17, 2005, meeting in Washington, DC, the NOSB recommended that the Secretary continue the use of 143 substances in organic crop and livestock production and handling. The NOSB recommended not renewing the listing of one substance, potassium tartrate made from tartaric acid. The substance appears twice on the Nation List, with two different names. The NOSB recommended removing it because of redundancy.

The Handling Committee will discuss its continued work on determining when a product is agricultural versus nonagricultural. The Materials and Handling Committees will discuss NOP feedback regarding guidance for making determinations on whether a substance is synthetic or non-synthetic. Finally, the Policy Development and Handling Committees will present, for full NOSB consideration, a recommendation for facilitating determinations regarding the commercial availability of organic agricultural ingredients.

For further information, see *http://www.ams.usda.gov/nop.* Copies of the NOSB meeting agenda can be requested from Ms. Katherine Benham by telephone at (202) 205–7806; or by accessing the NOP Web site at *http://www.ams.usda.gov/nop.*

The Meeting is Open to the Public. The NOSB has scheduled time for public input for Wednesday, April 19, 2006, from 2 p.m. to 4:15 p.m., and Thursday, April 20, 2006, from 11 a.m. to 1 p.m. Individuals and organizations wishing to make an oral presentation at the meeting may forward their request by mail, facsimile, or e-mail to Katherine Benham at addresses listed in **ADDRESSES** above. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing. Written submissions may contain information other than that presented at the oral presentation.

Written comments may also be submitted at the meeting. Persons submitting written comments at the meeting are asked to provide 30 copies.

Interested persons may visit the NOSB portion of the NOP Web site *http://www.ams.usda.gov/nop* to view available documents prior to the meeting. Approximately 6 weeks following the meeting interested persons will be able to visit the NOSB portion of the NOP Web site to view documents from the meeting.

Dated: March 17, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–2788 Filed 3–21–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fishel Vegetation and Transportation Management Project; Chequamegon-Nicolet National Forest, Vilas and Forest Counties, WI

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

Authority: The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4346); Council on Environmental quality Regulations, title 40, Code of Federal Regulations, parts 1500–1508 (40 CFR parts 1500–1508); and U.S. Department of Agriculture NEPA Regulations, part 1b (7 CFR part 1b).

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to harvest trees and associated transportation management activities.

The purpose and need identified for the Fishel project area is to: Improve structural diversity (age/size class) and species diversity in the northern hardwood interior block habitats and maintain forest composition while improving riparian habitat, contributing toward satisfying demand for timber products, and to provide an efficient road system that will meet long-term transportation needs to move the Fishel project area towards the desired conditions as described in the 2004 Forest Plan.

Actions are proposed to meet or move towards meeting Forest Plan goals 1.1, 1.2, 1.4, 2.5, 3.1, as well as meet Forest Plan objectives through design features and treatment mitigation.

The project area is located on public lands administered by the Eagle River-Florence Ranger District approximately 30 miles northeast of Rhinelander, Wisconsin. It is located approximately 10 miles northeast of Eagle River, bordered on the west and north by Big Sand Lake and the Michigan border, on the east by State highway 55 and on the south by State Highway 70.

No Action is one alternative that will be considered. Additional alternatives will be formulated based on public issues, and response analysis. The proposed action involves harvesting approximately 16.9 MMBF (million board feet) of green trees from approximately 5,517 acres within an analysis area of about 35,200 acres. Harvest of trees would be by ground based (tractor) methods during the winter months. Most harvested areas would be open to natural regeneration with some areas planted to longer lived white pine near trout streams, and jack pine for age class diversity.

Road work would include construction of 2.1 miles of new road and 23.7 miles of road reconstruction to access harvest activity stands. The transportation management proposal includes construction of 2.1 miles of new road, 23.7 miles of road reconstruction and 44.6 miles of road decommissioning to move towards the road densities identified in the Forest Plan. After the project is completed, approximately 107 miles of existing

Forest Service Roads are proposed to remain open and be maintained.

DATES: Written comments concerning the scope of the analysis described in this notice should be received within 45 days of the date of publication of this notice in the **Federal Register**.

ADDRESSES: Send written comments to Chequamegon-Nicolet National Forest, Deputy Forest Supervisor Jeanne Higgins, c/o Lois Pfeffer, 145 East 2nd Street, Powell, WY 82453.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be addressed to Lois Pfeffer, Forester, TEAMS Planning, phone (550) 359–7023.

SUPPLEMENTARY INFORMATION: This EIS will tier to the 2004 FEIS for the Chequamegon-Nicolet National Forest Land and Resource Management Plan (Forest Plan). The Chequamegon-Nicolet Forest Plan provides the overall guidance (Goals, Objectives, Standards, and Management Area Direction) to achieve the Desired Future Condition for the area being analyzed, and contains specific management area prescriptions for the entire Forest.

The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations that may be interested in, or affected by the proposed action. The Forest Services invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 45 days from the date of publication of this in the **Federal Register**.

The Eagle River-Florence Ranger District of the Chequamegon-Nicolet National Forest in Forest and Vilas Counties in the state of Wisconsin would administer the proposed management activities for this analysis. Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are: (1) During the scoping process, the next 45 days following publication of this notice in the **Federal Register**, and (2) during the formal review period of the Draft EIS.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and intentions.

Vermont Yankee Nuclear Power Corp. v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waved or dismissed by the courts.

City of Angoon v. *Hodel,* 803 F. 2d 1016, 1022 (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final Environmental Impact Statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National environmental Policy Act, 40 CFR 1503.3 in addressing these points.

It is projected the final release of the EIS to be November 30, 2006. The Forest Supervisor or Deputy Forest Supervisor for the Chequamegon-Nicolet National Forest are the responsible officials for the EIS. After considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies a decision by this official will be made regarding the proposal. The reasons for the decision will be documented in a Record of Decision. The Forest Supervisor's office of the Chequamegon-Nicolet National Forest is located at 1170 4th Avenue South, Park Falls, WI 54552, phone: 715–762–2461.

Dated: March 16, 2006.

Jeanne M. Higgins,

Deputy Forest Supervisor, Chequamegon-Nicolet National Forest.

[FR Doc. 06–2762 Filed 3–21–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

New Mexico Collaborative Forest Restoration Program Technical Advisory Panel

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The New Mexico Collaborative Forest Restoration Program Technical Advisory Panel will meet in Albuquerque, New Mexico. The purpose of the meeting is to provide recommendations to the Regional Forester, USDA Forest Service Southwestern Region, on which forest restoration grant proposals submitted in response to the Collaborative Forest Restoration Program Request for Proposals best meet the objectives of the Community Forest Restoration Act (Title VI, Pub. L. 106–393).

DATES: The meeting will be held April 24–28, 2006, beginning at 1 p.m. on Monday, April 24 and ending at approximately 4 p.m. on Friday, April 28.

ADDRESSES: The meeting will be held at the Holiday Inn, 5050 Jefferson St. NE, Albuquerque, NM 87109; 505–944–2222. Written comments should be sent to Walter Dunn, at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE, Albuquerque, NM 87102. Comments may also be sent to via e-mail to *wdunn@fs.fed.us,* or via facsimile to Walter Dunn at (505) 842–3265.

All comments, including names and addressed when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE, Albuquerque, or during the Panel meeting at the Holiday Inn, 5050 Jefferson St. NE, Albuquerque, NM 87109; 505–944–2222.

FOR FURTHER INFORMATION CONTACT: Walter Dunn, Designated Federal Official, at (505) 842–3425, or Melissa Zaksek, at (505) 842–3289, Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE, Albuquerque, NM 87102.

Individuals who use telecommunication devices for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 3 a.m. and 8 p.m., eastern standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Panel discussion is limited to Forest Service staff and Panel members. However, project proponents may respond to questions of clarification from Panel members or Forest Service staff. Persons who wish to bring Collaborative Forest Restoration Program grant proposal review matters to the attention of the Panel may file written statements with the Panel staff before or after the meeting. Public input sessions will be provided and individuals who submitted written statements prior to the public input sessions will have the opportunity to address the Panel at those sessions.

Dated: March 10, 2006.

Abel M. Camarena,

Deputy Regional Forester.

[FR Doc. 06–2755 Filed 3–21–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on April 4, 2006 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on April 6, 2006 from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Del Norte County Unified School District Board Room, 301 West Washington, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Julie Ranieri, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3673. E-mail: *jranieri@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The RAC will discuss the process for requesting proposals for Fiscal Year 2007 projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: March 16, 2006.

Jean M. Hawthorne,

Acting Forest Supervisor.

[FR Doc. 06–2763 Filed 3–21–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Web site Update, (5) Project Proposal/Possible Action, (6) General Discussion (7) Next Agenda.

DATES: The meeting will be held on March 27, 2006, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Janet Flanagan, Acting DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95939. (530) 934–1268; E-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 24, 2006 will have the opportunity to address the committee at those sessions.

Dated: March 16, 2006.

Linda Angerer,

Acting Designated Federal Official.

[FR Doc. 06–2771 Filed 3–21–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Environmental Compliance Questionnaire for National Oceanic and Atmospheric Administration Federal Financial Assistance Applicants.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 3,000.

Number of Respondents: 1,000.

Average Hours Per Response: 3 hours.

Needs and Uses: This information collection is needed to ensure that all projects supported by NOAA through grants or other financial assistance awards comply with the National Environmental Policy Act (NEPA 42 U.S.C. 4321–4347), the Council on Environmental Quality's (CEQ) Regulations for Implementing NEPA (40 CFR parts 1500–1508), and NOAA Administrative Order (NAO) 216–6. The National Environmental Policy Act and CEQ implementing regulations require that an environmental analysis be completed for all major federal actions significantly affecting the environment. In order to determine NEPA compliance requirements for a project being funded by NOAA, NOAA must assess information which can only be provided by the federal financial assistance applicant.

Affected Public: Not-for-profit institutions; individuals or households; business or other for-profit organizations; State, Local or Tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: March 16, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–4115 Filed 3–21–06; 8:45 am]

BILLING CODE 3510–NW–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD FEBRUARY 14, 2006 THROUGH MARCH 13, 2006

Firm	Address	Date petition accepted	Product
Saxonburg Ceramics, Inc.	100 N. Isabella Street, Saxonburg, PA 16056.	2/14/06	Ceramic insulating materials.
General Tool Specialties, Inc.	284 Sunnymeade Road, Hillsborough, NJ 08844.	3/1/06	Plastic injection molds.
Wasley Products, Inc.	87 Spring Lane, Plainville, CT 06062	3/1/06	Custom rubber products and custom plastic injection molded products.
Peninsula Plastics Company, Inc.	2800 Auburn Court, Auburn Hills, MI 48326.	3/1/06	Cases, crates and pallets of thermo-formed plastic.
Technical Die Casting, Inc	Box 349 Highway 14 West, Stockton, MN 55988.	3/8/06	Aluminum and zinc cast hydraulic or pneumatic motion control valves, gas valves and electric brackets and housings.
Newtex Industries, Inc.	8050 Victor Mendon Road, Victor, New York 14564.	3/8/06	High temperature fiberglass textiles products.
Sun Company, Inc.	14025 W. 66th Avenue, Jefferson, CO 80004.	3/13/06	Navigational instruments, measurement instruments, levels and promotional products.
Little Homer, Inc. dba Miss Lori Ann	1318 Perryman, Palacios, TX 77465	3/13/06	Shrimp.

The following firm was inadvertently omitted from 71 FR 3259, 1/20/06.

Firm	Address	Date petition accepted	Product
Lakewood Engineering and Manufacturing Co., Inc.	501 North Sacramento Boulevard, Chicago, IL 60612.	1/5/06	Portable electric fans and heaters.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Chief Counsel, Room 7005, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's interim final rule (70 FR 47002) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: March 15, 2006.

Barry Bird,

Chief Counsel.

[FR Doc. E6–4122 Filed 3–21–06; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. A–549–813]

Canned Pineapple Fruit From Thailand: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 22, 2006.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4162 or (202) 482–5193, respectively.

Background

On August 29, 2005, the Department of Commerce (the Department) published a notice of initiation of an administrative review of the antidumping duty order on canned pineapple fruit from Thailand, covering the period July 1, 2004, through June 30, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 70 FR 51009. The preliminary results of review are currently due no later than April 2, 2006.

Extension of Time Limit for Preliminary Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

We determine that it is not practicable to complete the preliminary results of this review within the original time limit because the review involves examining complex cost issues. Therefore, the Department is fully extending the time limit for completion of the preliminary results until no later than July 31, 2006, which is 365 days from the last day of the anniversary month of the date of publication of the order. The deadline for the final results of this administrative review continues to be 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: March 16, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 06–2787 Filed 3–21–06; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–122–822, A–428–815)

Notice of Final Results of Antidumping Duty Changed Circumstances Reviews and Revocation of Orders In Part: Certain Corrosion–Resistant Carbon Steel Flat Products From Canada and Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 8, 2006, the U.S. Department of Commerce (the Department) published a notice of preliminary results of changed circumstances reviews with the intent to revoke, in part, the antidumping duty orders on certain corrosion–resistant carbon steel flat products (corrosion–resistant steel) from Canada and Germany, as described below. *See Preliminary Results of Antidumping Duty Changed Circumstances Reviews And Notice of Intent to Revoke Orders in Part: Certain Corrosion–Resistant Carbon Steel Flat Products from Canada and Germany*, 71 FR 6447 (February 8, 2006) (*Preliminary Results*). In our *Preliminary Results*, the Department invited interested parties to comment on the request to exclude ''wear plate'' (described below) from the scope of these orders. The Department received no comments.

The Department concludes that producers accounting for substantially all of the production of the domestic like product to which these orders pertain lack interest in the relief provided by these orders with respect to wear plate because the domestic parties: 1) made an affirmative statement of no interest in the continuation of the orders with respect to that merchandise; and 2) did not comment on the *Preliminary Results*, in which the Department stated its intent to revoke the order with respect to this merchandise. Therefore, the Department concludes that it is appropriate to revoke these orders, in part, with respect to unliquidated entries of wear plate, not subject to the final results of an administrative review.

EFFECTIVE DATE: March 22, 2006.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Abdelali Elouaradia, 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) 482–8029 or (202) 482–1374, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty orders on corrosion–resistant steel from Canada and Germany on August 19, 1993. *See Notice of Antidumping Duty Order: Corrosion–Resistant Carbon Steel Flat Products from Canada*, 58 FR 44162. *See also Notice of Antidumping Duty Order: Corrosion–Resistant Carbon Steel Flat Products from Germany*, 58 FR 44170. On November 7, 2005, Eutectic Corporation (Eutectic), a U.S. importer, requested that the Department exclude a product commonly known as wear plate and marketed under the name of ''CastoDur Diamond Plate'' from the scope of these orders. *See* Eutectic's submissions to the Secretary, dated November 7, 2005 (Eutectic Requests).

In its requests, Eutectic asserts that certain domestic producers, *i.e.*, United States Steel Corporation (U.S. Steel) and Mittal Steel USA ISG Inc. (formerly Bethlehem Steel Corporation, Ispat Inland Steel, and LTV Steel Company, Inc.) (Mittal USA) and certain other interested parties, *i.e.*, Nucor Plate Group of Nucor Corporation and Ipsco Inc, do not have any interest in the continuation of the order with respect to certain wear plate products described below. The Department contacted U.S. Steel, Mittal USA, Nucor, and Ipsco on December 7, 2005, to confirm their expressed lack of interest regarding continuation of these orders with respect to certain wear plate products. *See* Memorandum to the File from Angelica L. Mendoza, Senior Case Analyst, Office 7, ''Confirmation of Interested Parties' Lack of Interest for 'Wear Plate' (marketed as 'CastoDur Diamond Plate') to Be Subject to the Above–Captioned Antidumping Duty Orders,'' dated December 7, 2005.

In response to Eutectic's request, and based on the letters from domestic producers and interested parties in these cases stating that they had no interest in retaining this product in the scope of these orders, the Department initiated these changed circumstances reviews. *See Initiation of Antidumping Duty Changed Circumstances Reviews: Certain Corrosion–Resistant Carbon Steel Flat Products from Canada and Germany*, 70 FR 76763 (December 28, 2005). The Department provided interested parties an opportunity to

comment on the initiation of these changed circumstances reviews with respect to certain wear plate products. We did not receive any comments.

Absent any comments, on February 8, 2006, the Department preliminarily concluded that producers accounting for substantially all of the production of the domestic like product to which these orders pertain, lack interest in the relief provided by these orders with respect to certain wear plate products. *See Preliminary Results*, 71 FR at 6448. The Department provided interested parties an opportunity to comment on its preliminary intent to revoke the orders, in part, with respect to certain wear plate products. We did not receive any comments. Therefore, the final results of these reviews are not different from the preliminary results, and the Department is revoking the orders, in part, with respect to certain wear plate products as described in the ''Scope of the Orders'' section of this notice.

Scope of the Orders

The products covered by each of these orders are corrosion–resistant carbon steel flat products (corrosion–resistant steel) from Canada and Germany, respectively. This scope includes flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in these orders are flat–rolled products of non–rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') – for example, products which have been beveled or rounded at the edges. Excluded from these orders are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin–free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these orders are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from these orders are certain clad stainless flat–rolled products, which are three–layered corrosion–resistant carbon steel flat–rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

On September 22, 1999, the Department issued the final results of a changed circumstances review partially revoking the order with respect to certain corrosion–resistant steel from Germany.[1] This partial revocation applies to certain corrosion–resistant deep–drawing carbon steel strip, roll–clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140. The merchandise's chemical composition encompasses a core material of U St 23 (continuous casting) in which carbon is less than 0.08; manganese is less than 0.30; phosphorous is less than 0.20; sulfur is less than 0.015; aluminum is less than 0.01; and the cladding material is a minimum of 99% aluminum with silicon/copper/iron of less than 1%. The products are in strips with thicknesses of 0.07mm to 4.0mm (inclusive) and widths of 5mm to 800mm (inclusive). The thickness ratio of aluminum on either side of steel may range from 3%/94%/3% to 10%/80%/10%.

As a result of these current changed circumstance reviews, also excluded from the scope of these orders are certain corrosion–resistant carbon steel flat products from Canada and Germany meeting the following description: certain flat–rolled wear plate ranging from 30 inches to 50 inches in width, from 45 inches to 110 inches in length and from 0.187 inch to 0.875 inch in total thickness, having a layer on one side composed principally of a combination of boron carbides, chromium carbides, nickel carbides, silicon carbides, manganese carbides, niobium carbides, iron carbides, tungsten carbides, vanadium carbides, titanium carbides and/or molybdenum carbides fused to a non–alloy flat–rolled steel substrate. The carbides are in the form of M_xC_x where ''M'' stands for the metal and ''x'' for the atomic ratio. An example of a common carbide would be (Cr_7C_3). The carbide layer is a visually distinct layer ranging in thickness from 0.062 inch to 0.312 inch with hardness at the surface of the carbide layer in excess of 55 HRC.

Final Results of Reviews and Revocation of Antidumping Duty Orders, In Part

Pursuant to sections 751(d)(1) and 782(h)(2) of the Tariff Act of 1930, as amended (the Act), the Department may revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review.

In the instant reviews, based on the information provided by Eutectic, and comments from domestic interested parties, the Department preliminarily found that the continued relief provided by the orders with respect to certain wear plate products from Canada and Germany is no longer of interest to the domestic industry. We did not receive any comments on our *Preliminary Results*. Therefore, the Department is revoking the orders on corrosion–resistant steel from Canada and Germany with regard to the products that meet the specifications detailed above.

We will instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping duties, and to refund any estimated antidumping duties collected on all unliquidated entries of certain wear plate products which are not covered by

[1] *See Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, 64 FR 51292 (September 22, 1999). The Department noted that the affirmative statement of no interest by petitioners, combined with the lack of comments from interested parties, is sufficient to warrant partial revocation.

the final results of an administrative review or automatic liquidation. The most recent period for which the Department has completed an administrative review, or ordered automatic liquidation, is August 1, 2004, through July 31, 2005. Any prior entries are subject to either the final results of review or automatic liquidation. Therefore, we will instruct CBP to liquidate, without regard to antidumping duties, shipments of certain wear plate products entered, or withdrawn from warehouse, for consumption on or after August 1, 2005. We will also instruct CBP to pay interest on such refunds in accordance with section 778 of the Act and 19 CFR 351.222(g)(4).

These changed circumstances reviews, partial revocation of these antidumping duty orders and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and section 351.216(e) and 351.222(g)(1)(i) of the Department's regulations.

Dated: March 13, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–4149 Filed 3–21–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–881)

Rescission of Antidumping Duty Administrative Review: Certain Malleable Iron Pipe Fittings From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by LDR Industries, Inc. and Beijing Sai Lin Ke Hardware Co., Ltd., the U.S. Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain malleable iron pipe fittings from the People's Republic of China with respect to Beijing Sai Lin Ke Hardware Co., Ltd. No other interested party requested a review. The period of review is December 1, 2004, through November 30, 2005. On February 13, 2006, LDR Industries, Inc. and Beijing Sai Lin Ke Hardware Co., Ltd. withdrew their request for an administrative review of Beijing Sai Lin Ke Hardware Co., Ltd. Accordingly, the Department is now rescinding the administrative review of Beijing Sai Lin Ke Hardware Co., Ltd.

EFFECTIVE DATE: March 22, 2006.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian, AD/CVD Operations, Office 7, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1131.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 2003, the Department published an antidumping duty order on certain malleable iron pipe fittings from the People's Republic of China. *See Antidumping Duty Order: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 69376 (December 12, 2003).

On December 1, 2005, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order covering certain malleable iron pipe fittings from the People's Republic of China. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 70 FR 72109 (December 1, 2005). On December 23, 2005, the Department received a timely request from LDR Industries, Inc. and Beijing Sai Lin Ke Hardware Co., Ltd. for an administrative review of the antidumping duty order on certain malleable iron pipe fittings from the People's Republic of China with respect to Beijing Sai Lin Ke Hardware Co., Ltd. On February 1, 2006, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department published a notice of initiation of the administrative review of Beijing Sai Lin Ke Hardware Co., Ltd., covering the period December 1, 2004, through November 30, 2005. *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 5241 (February 1, 2006).

On February 7, 2006, the Department released the antidumping duty questionnaire to Beijing Sai Lin Ke Hardware Co., Ltd. On February 13, 2006, LDR Industries, Inc. and Beijing Sai Lin Ke Hardware Co., Ltd. withdrew their request in a timely manner for an administrative review of Beijing Sai Lin Ke Hardware Co., Ltd. No other party had requested a review.

Scope of the Order

The products covered by the antidumping duty order are certain malleable iron pipe fittings, cast, other than grooved fittings, from the People's Republic of China. The merchandise is classified under item numbers 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80 of the Harmonized Tariff Schedule of the United States (HTSUS). Excluded from the scope of this antidumping duty order are metal compression couplings, which are imported under HTSUS number 7307.19.90.80. A metal compression coupling consists of a coupling body, two gaskets, and two compression nuts. These products range in diameter from 1/2 inch to 2 inches and are carried only in galvanized finish. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Rescission of the Administrative Review

Pursuant to the Department's regulations, the Department will rescind an administrative review ''if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review.'' *See* 19 CFR 351.213(d)(1). Because LDR Industries, Inc. and Beijing Sai Lin Ke Hardware Co., Ltd. withdrew their request for an administrative review on February 13, 2006, which is within the 90-day deadline, and no other party requested a review, the Department is rescinding this administrative review in accordance with 19 CFR 351.213(d)(1). The Department will issue appropriate assessment instructions to U.S. Customs and Border Protection within 15 days of publication of this notice.

Notification Regarding APOs

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, which continues to govern business proprietary information in this segment of the proceeding. 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 which is subject to sanction.

The Department is issuing and publishing this notice in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: March 17, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–4151 Filed 3–21–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–485–805)

Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 10, 2006, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line, and pressure pipe (seamless pipe) from Romania. The period of review is August 1, 2004, through July 31, 2005. We did not receive comments from interested parties, and we did not make any changes to the margin for the final results. The final margin for S.C. Silcotub S.A. is listed below in the section entitled ''Final Results of Review.''

DATE: March 22, 2006.

FOR FURTHER INFORMATION CONTACT: John Holman at (202) 482–3683 or Janis Kalnins at (202) 482–1392, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 2006, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on seamless pipe from Romania. See *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 1509 (January 10, 2006) (*Preliminary Results*). We invited interested parties to comment on the *Preliminary Results*. We did not receive comments from interested parties, and we did not make any changes to the margin for the final results. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the order are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of the order are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall–thickness, manufacturing process (hot finished or cold–drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to the order are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, our written description of the merchandise subject to the scope of this order is dispositive. For a further and more specific description of the scope of the order, please see *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination Not to Revoke in Part*, 70 FR 24520 (May 10, 2005).

Facts Available

For these final results, we continue to find that S.C. Silcotub S.A. did not act to the best of its ability by not submitting a response to our antidumping duty questionnaire, thus withholding information necessary to calculate an accurate dumping margin and information which we requested. Accordingly, we continue to find that the use of adverse facts available is warranted under section 776 of the Act. For a detailed discussion of our application, selection, and corroboration of the rate we selected as adverse facts available, see *Preliminary Results*, 71 FR at 1510.

Final Results of Review

As a result of our review, we determine that a weighted–average dumping margin of 15.15 percent exists for S.C. Silcotub S.A. for the period August 1, 2004, through July 31, 2005.

Duty Assessment and Cash–Deposit Requirements

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. Because we are applying adverse facts available to all exports of subject merchandise produced or exported by S.C. Silcotub S.A., we will instruct CBP to assess the final percentage margin against the entered customs values on all applicable entries during the period of review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

The following deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of seamless pipe from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) The cash–deposit rate for S.C. Silcotub S.A. will be 15.15 percent; (2) for merchandise exported by producers or exporters that were previously reviewed or investigated, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the producer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value investigation but the manufacturer is, the cash–deposit rate will 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 in this or any previous review, the cash–deposit rate shall be 13.06 percent, the all–others rate established in the 2002–03 administrative review. See *Notice of Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania*, 70 FR 7237 (February 11, 2005). These cash–deposit requirements

shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

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 the 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.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. 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 sanctionable violation.

These final results of administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 16, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–4150 Filed 3–21–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–583–831)

Stainless Steel Sheet and Strip in Coils from Taiwan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATE: March 22, 2006.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Karine Gziryan, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3518 or (202) 482–4081, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 2005, the Department of Commerce (the Department) published a notice of initiation of an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Taiwan, covering the period July 1, 2004, through June 30, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009. The preliminary results of review are currently due no later than April 3, 2006.

Extension of Time Limit for Preliminary Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

We determine that it is not practicable to complete the preliminary results of this review within the original time limit because the review involves examining certain complex cost issues. Therefore, the Department is fully extending the time limit for completion of the preliminary results until no later than July 31, 2006, which is 365 days from the last day of the anniversary month of the date of publication of the order. The deadline for the final results of this administrative review continues to be 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: March 16, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–4148 Filed 3–21–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Atlantic Highly Migratory Species Recreational Landings Reports

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 22, 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 and instructions should be directed to Margo Schulze-Haugen, (301) 713–2347 or *Margo.Schulze-Haugen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Recreational catch reporting supplements existing data collection programs and provides important data used to monitor catches of highly migratory species. The data collected through this program are currently used for both domestic and international management and stock assessment purposes. The intent of Atlantic bluefin tuna (BFT) catch reporting is to provide real-time catch information for monitoring the recreational BFT fishery. Under the Atlantic Tunas Convention Act of 1975 (ATCA, 16 U.S.C. 971), the United States is required to abide by recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), including a specified BFT quota. This program supports BFT management and scientific research authorized under ATCA and the Magnuson Stevens Fishery Conservation and Management Act (MSFMCA,16 U.S.C. 1801 et seq.). Recreational anglers are required to report specific information regarding

their catch after they land a BFT. The reported information is tallied and used to monitor recreational landings and incorporated into scientific analysis of BFT stock status. Any State that participates in tagging programs to monitor recreational landings would submit weekly and one annual report to summarize landings and results to date. Atlantic swordfish and billfish are managed internationally by ICCAT and nationally under the ATCA and the MSFMCA. This collection will provide information needed to monitor the recreational limit established by ICCAT for Atlantic blue and white marlin, and the recreational catch of North Atlantic swordfish, which is applied to the ICCAT established U.S. quota. This collection will also provide information on recreational landings of West Atlantic sailfish which is unavailable from established monitoring programs. Collection of sailfish catch information is authorized under MSFCMA for purposes of stock management.

II. Method of Collection

Respondents reporting BFT in all states (including the United States Virgin Islands and the commonwealth of Puerto Rico) other than MD or NC may use either an Internet Website or an interactive voice response (IVR) telephone system. Respondents reporting Atlantic marlin, West Atlantic sailfish, or North Atlantic swordfish in all states (including the United States Virgin Islands and the commonwealth of Puerto Rico) other than MD or NC must report by calling a toll-free telephone number. In MD and NC a paper reporting system is used for all of the aforementioned species. Respondents in MD and NC must submit a landing card at a state reporting station.

III. Data

OMB Number: 0648–0328.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; individuals or households; and State, Local, or Tribal government.

Estimated Number of Respondents: 10,089.

Estimated Time per Response: 5 minutes for an initial call-in or Internet report; 5 minutes for a confirmation call; 10 minutes for a landing card; 1 hour for a weekly state report; and 4 hours for an annual state report.

Estimated Total Annual Burden Hours: 1,369.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 16, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–4114 Filed 3–21–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031506A]

Marine Mammals; File Nos. 358–1787 and 1070–1783

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

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that permits to conduct scientific research on marine mammals have been issued to Dr. Alejandro Acevedo-Gutierrez, Biology Department, Western Washington University, Bellingham, Washington (File No. 1070–1783); and the Alaska Department of Fish and Game, Division of Wildlife Conservation, Juneau, Alaska (File No. 358–1787).

ADDRESSES: The permits 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;

File No. 1070–1783: Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426; and

File No. 358–1787: Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 14, 2005, notice was published in the **Federal Register** (70 FR 54369) that a request for a scientific research permit to take harbor seals (Phoca vitulina) in Washington had been submitted by Dr. Acevedo-Gutierrez. On June 28, 2005, notice was published in the **Federal Register** (70 FR 37089) that a request for a scientific research permit to take harbor seals, spotted seals (P. largha), ringed seals (P. hispida), ribbon seals (P. fasciata), and bearded seals (Erignathus barbatus) in Alaska had been submitted by the Alaska Department of Fish and Game. The requested permits have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 1070–1783–00 authorizes researchers to disturb harbor seals from the Washington Inland Waters Stock during aerial and vessel surveys and scat collections. The objective of the research is to study temporal and spatial variation in numbers and diet composition of harbor seals to determine responses of harbor seals to changes in prey density and the impact of seal behavior on marine protected areas. The permit is valid through March 2011.

Permit No. 358–1787–00 authorizes researchers to disturb seals in Alaska during aerial surveys. The permit also allows researchers to capture, sample, and tag seals and to disturb additional seals incidental to these capture and sampling operations. The permit allows for the research-related mortality of a limited number of seals each year. The permit allows for the collection of biological samples from subsistence harvested seals for various analyses. The purpose of the research is to collect additional information on the ecology of these seal species with the objectives of estimating trends in population abundance and identifying factors affecting the decline of some populations. The permit is valid through March 2011.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that issuance of the proposed permits is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: March 16, 2006.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–4161 Filed 3–21–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022806F]

Endangered Species; File No. 1518–01

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

ACTION: Notice; issuance of permit modification.

SUMMARY: Notice is hereby given that Carlos Diez, Departamento de Recursos Naturales y Abmientales de Puerto Rico, P.O. Box 9066600, San Juan, Puerto Rico 00906–6600 has been issued a modification to scientific research Permit No.1518.

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 Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 27, 2005, notice was published in the **Federal Register** (70 FR 61940) that a modification of Permit No. 1518, issued August 8, 2005 (70 FR 47813), had been requested by the above-named individual. The requested modification 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 regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1518 currently authorizes the permit holder to study green and hawksbill sea turtles. The purpose of the research is to identify marine habitat, determine distribution and abundance, determine sex ratios, evaluate the extent of ingestion of marine debris, determine growth rates and sexual maturity, and quantify threats. Mr. Diez is currently authorized to annually capture up to 320 hawksbill and 250 green sea turtles by hand or entanglement net. All turtles are measured, weighed, tagged, and blood sampled. A subset of animals are lavaged and have transmitters attached to them. One leatherback sea turtle could be incidentally captured during the course of the studies but would be released alive. The permit modification allows the permit holder to skin biopsy 190 green and hawksbill sea turtles. Under this modification a subset of 10 green turtles will undergo fibropapillomatosis tumor removal surgery and subsequent rehabilitation. Turtles that have severe tumors and are in extremely poor health would be euthanized. The applicant does not expect that more than two turtles would require euthanasia. The goal of the additional research will be to create baseline parameters of health assessments, determine groups' heterogenity and dispersal, and provide insight into the pathogenesis of the disease in the wild through the use of long-term capture and release surveys.

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 endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 16, 2006.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–4156 Filed 3–21–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031606C]

Endangered Species; File No. 1571

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Southeast Fisheries Science Center (SEFSC), NMFS, 75 Virginia Beach Drive, Miami, Florida 33149, has applied in due form for a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), olive ridley (*Lepidochelys olivacea*), and leatherback (*Dermochelys coriacea*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 21, 2006.

ADDRESSES: The application 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 Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427-2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1571.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Amy Hapeman, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The research would use resource assessment cruises as a platform to fill in data gaps in the basic biology of sea

turtles, provide information on population dynamics to improve stock assessments, and to better understand the distribution of turtles in time and space. Turtles that are incidentally captured during resource assessment cruises would be used by the SEFSC in their assessments of distribution and abundance of turtles, as well as the cumulative impact of the relevant fishery on the stocks. The incidental capture would accrue to and be authorized by the fisheries being researched. The SEFSC would annually handle, identify, examine, measure, weigh, photograph, flipper tag, passive integrated transponder (PIT) tag, skin biopsy, and release or salvage the carcass, tissue, and parts of up to 6 green, 17 loggerhead, 8 Kemp's ridley, 6 hawksbill, 6 olive ridley, 6 unidentified hardshell, and 17 leatherback sea turtles. Research would occur in the Atlantic Ocean, Gulf of Mexico, Caribbean Sea, and their tributaries. The permit would be issued for five years.

Dated: March 16, 2006.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–4159 Filed 3–21–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0026]

Federal Acquisition Regulation; Submission for OMB Review; Change Order Accounting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0026).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning change order accounting. A request for public comments was published in the **Federal Register** at 71 FR 2914, January 18, 2006. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 21, 2006.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Contract Policy Division, GSA (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR clause 52.243–6, Change Order Accounting, requires that, whenever the estimated cost of a change or series of related changes exceed $100,000, the contracting officer may require the contractor to maintain separate accounts for each change or series of related changes. The account shall record all incurred segregable, direct costs (less allocable credits) of work, both changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

B. Annual Reporting Burden

Respondents: *8,750.*
Responses Per Respondent: *18.*
Annual Responses: *157,500.*
Hours Per Response: *.084.*
Total Burden Hours: *13,230.*

C. Annual Recordkeeping Burden

Recordkeepers: *8,750.*
Hours Per Recordkeeper: *1.5.*
Total Recordkeeping Burden Hours: *13,125.*

Total Burden Hours: *26,355.*

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0026, Change Order Accounting, in all correspondence.

Dated: March 14, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

[FR Doc. 06–2751 Filed 3–21–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF ENERGY

Advance Notice of Intent To Prepare an Environmental Impact Statement for the Global Nuclear Energy Partnership Technology Demonstration Program

AGENCY: Department of Energy.

ACTION: Advance notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) is providing this Advance Notice of Intent (ANOI) to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) for the Global Nuclear Energy Partnership (GNEP) Technology Demonstration Program. The GNEP Technology Demonstration Program would demonstrate certain technologies that could change the way spent nuclear fuel from commercial light-water nuclear power reactors is managed. This EIS will inform DOE officials and the public of the potential environmental impacts associated with the proposed action, which is to demonstrate U.S. capability to safely recycle spent nuclear fuel using proliferation-resistant separation processes and the conversion of transuranics into shorter-lived radioisotopes.

The proposed action includes three key elements that would comprise a proliferation-resistant closed fuel cycle: (1) The demonstration of separation processes in which usable and waste materials that are found in spent nuclear fuel are separated; (2) the demonstration of the conversion of transuranics; and (3) the demonstration of an advanced fuel fabrication process.

The EIS will evaluate all reasonable alternative technologies and locations for the key elements of the proposed GNEP Technology Demonstration Program. New facilities and

modifications to existing facilities might be required for the Technology Demonstration Program. The EIS will address siting, construction or modification, and operation of these facilities. DOE is issuing this ANOI, pursuant to its NEPA regulations at 10 CFR 1021.311(b), to inform and request early comments from Federal agencies, state and local governments, Native American tribes, industry, other organizations, and members of the public regarding the proposed action, the reasonable alternatives, and the potential environmental impacts.

DATES: DOE invites comments on this ANOI through May 8, 2006. DOE will consider comments received after May 8, 2006 to the extent practicable. DOE intends to issue a Notice of Intent (NOI) for the EIS later this year. After the NOI is issued, DOE will conduct public scoping meetings to assist in further defining the scope of the EIS and to identify significant issues to be addressed. The dates and locations of scoping meetings will be announced in the NOI, subsequent **Federal Register** notices (as needed), and in local media.

ADDRESSES: Please direct comments, suggestions, or relevant information on the planned EIS and questions concerning the proposed action to: Timothy A. Frazier, NEPA Document Manager, Office of Nuclear Energy, Science and Technology, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, Telephone: 866–645–7803, Fax: 866–645–7807, E-mail to: *GNEPTechDemo@nuclear.energy.gov.*

FOR FURTHER INFORMATION CONTACT: To request further information about the EIS or to be placed on the EIS distribution list, use any of the methods listed under **ADDRESSES** above. Supplementary information on GNEP and the proposed GNEP Technology Demonstration Program may be found at *http://www.gnep.energy.gov.*

For general information concerning the DOE NEPA process, contact: Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; telephone: 202–586–4600, or leave a message at 1–800–472–2756; fax: 202–586–7031; or send an e-mail to *askNEPA@eh.doe.gov.*

This ANOI will be available on the Internet at *http://www.eh.doe.gov/nepa* and *http://www.gnep.energy.gov.*

SUPPLEMENTARY INFORMATION:

Background

As part of President Bush's Advanced Energy Initiative, DOE has launched a new initiative, the Global Nuclear Energy Partnership (GNEP). The broad goals of GNEP are to: (1) Reduce the United States' dependence on foreign sources of fossil fuels and encourage economic growth, while meeting increasing demand for electricity without emitting air pollution and greenhouse gases; (2) recycle nuclear fuel using new proliferation-resistant technologies to recover more energy and reduce the volume of waste; (3) encourage prosperity growth and clean development around the world; and (4) utilize the latest technologies to reduce the risk of nuclear proliferation worldwide.

The proposed GNEP Technology Demonstration Program would involve the development of technologies to promote GNEP's goals. The GNEP Technology Demonstration Program would demonstrate technologies needed to implement a closed fuel cycle that enables recycling and consumption of spent nuclear fuel in a proliferation-resistant manner. While DOE has had some success at bench-scale testing of these technologies, it has not yet proven that these technologies will be feasible in demonstration-scale facilities.

The proposed GNEP Technology Demonstration Program includes three major projects that would be conducted in new or existing facilities. These projects would demonstrate: (1) Proliferation-resistant processes that would separate the usable elements in commercial spent nuclear fuel from its waste elements; (2) the conversion of transuranics into shorter-lived radioisotopes; and (3) operation of an advanced fuel fabrication facility. The GNEP Technology Demonstration Program EIS will address siting, construction or modification, and operation of these demonstration-scale facilities. (Decontamination and decommissioning of these facilities will be addressed in one or more future NEPA analyses.)

In addition, DOE anticipates preparing a separate NEPA analysis at a later date that would address the environmental impacts of potential future actions to encourage the commercial-scale adoption of these technologies for the management of spent nuclear fuel from commercial nuclear power reactors, as well as alternatives. At that time, DOE anticipates preparing a programmatic EIS that would address the potential environmental consequences of the widespread deployment of proliferation-resistant spent nuclear fuel separation technologies, technologies that consume transuranics while extracting their energy, and fuel fabrication technologies, including those technologies that are the subject of the Technology Demonstration Program.

As discussed above, the GNEP Technology Demonstration Program includes three major projects.

1. Demonstration of an Advanced Separation Process

Under the GNEP Technology Demonstration Program, DOE would demonstrate the capability to safely recycle spent nuclear fuel from commercial light-water nuclear power reactors using proliferation-resistant separation processes. In support of this effort, DOE would conduct demonstration-scale testing of a process that would separate the usable elements in spent commercial nuclear fuel from its waste elements.

Spent nuclear fuel contains uranium, transuranics (plutonium and other long-lived radioactive material), and fission products. The fission products are waste and make up less than five percent of the used fuel. The buildup of the fission products inhibits the nuclear fission reaction, so used fuel must be removed from a nuclear power plant. In order to consume transuranics and uranium, while recovering their energy content, the transuranics and uranium would be separated from the fission products and then fabricated into new fuel.

The GNEP Technology Demonstration Program would use advanced separation processes (such as, but not necessarily limited to, Uranium Extraction Plus, or UREX+). As discussed below, the products of these advanced separation processes can be used in a facility such as a fast reactor that would consume transuranics to produce energy.

2. Demonstration of the Conversion of Transuranics

DOE would demonstrate the destruction of transuranics separated from spent nuclear fuel from commercial nuclear power plants. To destroy the transuranics, DOE would take advantage of high-energy neutrons to fission, or split apart, long-lived transuranics and transmute, or convert, them into shorter-lived radioisotopes. DOE will consider a facility such as, but not necessarily limited to, a fast reactor as a source of high-energy neutrons. As transuranics are consumed, significant energy is released and can be converted into electricity, thereby producing useful energy from material that would otherwise be waste.

3. Demonstration of a Proliferation-Resistant Fuel Cycle and Advanced Fuel Fabrication

DOE would demonstrate the fabrication, testing, and qualification of advanced fuel forms in a multi-hot cell, multi-purpose research, development, and demonstration laboratory that can serve fuel cycle testing needs. The facility would use modular, flexible construction technologies with the near-term objective to fabricate and qualify fuels to be used in the facility for the conversion of transuranics.

Purpose and Need for Action

The purpose of the GNEP Technology Demonstration Program is to demonstrate U.S. capability to safely recycle spent nuclear fuel using proliferation-resistant separation processes and the conversion of transuranics into shorter-lived radioisotopes. DOE needs to identify and demonstrate technologies and identify the locations where those technologies would be demonstrated.

Potential Range of Alternatives

As part of the NEPA process, DOE will consider and evaluate all reasonable alternatives, including those identified in response to the ANOI, NOI, and during the public scoping process. DOE will also evaluate a No Action alternative.

Invitation To Comment

DOE invites Federal agencies, state and local governments, Native American tribes, industry, other organizations, and members of the public to provide comments on the proposed scope, alternatives (both technology and siting), and environmental issues to be analyzed in the forthcoming EIS for the GNEP Technology Demonstration Program. DOE will consider all such comments and other relevant information in developing an NOI. Comments on this ANOI should be submitted as described under **DATES** and **ADDRESSES** above.

Potential Environmental Issues for Analysis

DOE has tentatively identified the following environmental issues for analysis in the GNEP Technology Demonstration Program EIS. The list is presented to facilitate early comment on the scope of the EIS; it is not intended to be comprehensive nor to predetermine the alternatives to be analyzed or their potential impacts.

- Potential impacts to the general population and workers from radiological and nonradiological releases.
- Potential impacts of emissions on air and water quality.
- Potential impacts on flora and fauna of a region.
- Potential transportation impacts from the shipment of radioactive materials and waste.
- Potential impacts from postulated accidents.
- Potential disproportionately high and adverse effects on low-income and minority populations (environmental justice).
- Potential Native American concerns.
- Short-term and long-term land use impacts.
- Compliance with applicable Federal and state regulations.
- Long-term health and environmental impacts.
- Long-term site suitability.

NEPA Process

DOE plans to publish the NOI for the proposed GNEP Technology Demonstration Program EIS in the **Federal Register** later this year. The NOI will identify the technologies and sites that DOE proposes to evaluate as reasonable alternatives in the EIS. Following the publication of the NOI, there will be a 60-day public scoping period. Subsequently, DOE will announce the availability of the Draft EIS in the **Federal Register** and other media outlets. Federal agencies, state and local governments, Native American tribes, industry, other organizations, and members of the public will have an opportunity to submit comments. These comments will be considered and addressed in the Final EIS. DOE will issue a Record of Decision(s) no sooner than 30 days after publication of the Environmental Protection Agency's Notice of Availability of the Final EIS. DOE might announce its decision to implement all three projects in a single Record of Decision or in separate Records of Decision.

Issued in Washington, DC, on March 16, 2006.

C. Russell H. Shearer,

Acting Assistant Secretary for Environment, Safety and Health.

[FR Doc. E6–4162 Filed 3–21–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 15, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER96–1551–014; ER01–615–010; EL05–2–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Co of New Mexico submits an amendment to its July 15, 2005 compliance filing and requests FERC to consider the information submitted as further evidence that PNM lacks generation market power etc.

Filed Date: March 10, 2006.

Accession Number: 20060314–0015.

Comment Date: 5 p.m. Eastern Time on Friday, March 31, 2006.

Docket Numbers: ER03–447–004.

Applicants: Black Oak Energy, LLC.

Description: Black Oak Energy LLC submits an amendment to its triennial updated market analysis filed on February 13, 2006.

Filed Date: March 9, 2006.

Accession Number: 20060310–0182.

Comment Date: 5 p.m. Eastern Time on Thursday, March 30, 2006.

Docket Numbers: ER06–464–001.

Applicants: Highlands Energy Group LLC.

Description: Highlands Energy Group LLC submits a petition for acceptance of initial rate schedule, waivers and blanket authority. Highland also amended its filing on March 10, 2006, including a revised tariff per the Commission's request.

Filed Date: March 8, 2006.

Accession Number: 20060313–0130.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 29, 2006.

Docket Numbers: ER06–710–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits revisions to its open access transmission tariff & market administration and control area services tariff to allow three additional forms of credit support etc.

Filed Date: March 8, 2006.

Accession Number: 20060315–0019.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 29, 2006.

Docket Numbers: ER06–711–000.

Applicants: Hunlock Creek Energy Ventures.

Description: Hunlock Creek Energy Ventures submits a Notice of

Cancellation of its market-based rate tariff, currently designated as FERC Electric Tariff, Original Volume 1.

Filed Date: March 9, 2006.

Accession Number: 20060315–0018.

Comment Date: 5 p.m. Eastern Time on Thursday, March 30, 2006.

Docket Numbers: ER06–712–000.

Applicants: Allegheny Energy Supply Hunlock Creek, LLC.

Description: Allegheny Energy Supply Hunlock Creek, LLC submits its notice of cancellation of its market-based rate tariff, designated as FERC Electric Tariff, Original Volume 1, to be effective March 1, 2006.

Filed Date: March 9, 2006.

Accession Number: 20060315–0017.

Comment Date: 5 p.m. Eastern Time on Thursday, March 30, 2006.

Docket Numbers: ER06–713–000.

Applicants: Weyerhaeuser Company.

Description: Weyerhaeuser Co submits its petition for market-based rate authority, acceptance of initial rate schedule, waivers and blanket authority, Rate Schedule No. 1.

Filed Date: March 9, 2006.

Accession Number: 20060315–0016.

Comment Date: 5 p.m. Eastern Time on Thursday, March 30, 2006.

Docket Numbers: ER06–715–000.

Applicants: Community Energy, Inc.

Description: Community Energy, Inc submits a Notice of Cancellation of its Rate Schedule 1.

Filed Date: March 10, 2006.

Accession Number: 20060315–0008.

Comment Date: 5 p.m. Eastern Time on Friday, March 31, 2006.

Docket Numbers: ER06–718–000.

Applicants: Central Hudson Gas & Electric Corporation.

Description: Central Hudson Gas & Electric Corp submits an executed interconnection agreement with the City of New York respecting the continued interconnection of the Neversink Generating Station to its transmission system.

Filed Date: March 10, 2006.

Accession Number: 20060315–0003.

Comment Date: 5 p.m. Eastern Time on Friday, March 31, 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 than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4136 Filed 3–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–91–000, et al.]

United States Power Fund, II, L.P. et al.; Electric Rate and Corporate Filings

March 15, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. United States Power Fund II, L.P.; USPF II Institutional Fund, L.P.; Northbrook Carolina Hydro, LLC; Northbrook Acquisition Corporation

[Docket No. EC06–91–00]

Take notice that on March 10, 2006, United States Power Fund, L.P., USPF II Institutional Fund, L.P., Northbrook Carolina Hydro, LLC, and Northbrook Acquisition Corporation filed an application, pursuant to section 203 of the Federal Power Act, for authorizations for an indirect merger with Northbrook Carolina Hydro, LLC and North Acquisition Corp. that together own or control fourteen hydroelectric generating facilities that are qualifying facilities pursuant to part 292 of the regulations.

Comment Date: 5 p.m. Eastern Time on March 31, 2006.

2. Tomen Corporation, and Toyota Tsusho Corporation

[Docket No. EC06–92–000]

Take notice that on March 10, 2006, Toyota Tsusho Corporation and Tomen Corporation (the Applicants), submitted an application pursuant to section 203 of the Federal Power Act, seeking authorization for a merger of holding companies in a holding company system that includes a transmitting utility or an electric utility company (the Transaction). Applicants state that the Transaction has no effect on competition, rates or regulation, does not result in cross-subsidization and is in the public interest.

Comment Date: 5 p.m. Eastern Time on March 31, 2006.

3. Southwestern Power Administration

[Docket No. EF06–4011–000]

Take notice that on February 3, 2006, the Administrator of the Southwestern Power Administration, U.S. Department of Energy, submitted to the Federal Energy Regulatory Commission a memorandum advising the Commission that the Administrator approved and implemented a Discretionary Purchased Power Adder Adjustment to the Purchased Power Adder based on the formula included in Southwestern's Rate Schedules.

Comment Date: 5 p.m. Eastern Time on March 27, 2006.

4. Indeck Energy Services of Silver Springs, Inc.

[Docket No. EG06–39–000]

Take notice that on March 10, 2006, Indeck Energy Services of Silver Springs, Inc. filed with the Commission an Application for Market-Based Rate Authority pursuant to section 205 of the Federal Power Act.

Comment Date: 5 p.m. Eastern Time on March 31, 2006.

5. Indeck Energy Services of Silver Springs, Inc.

[Docket No. EG06–40–000]

Take notice that on March 10, 2006, Indeck Energy Services of Silver Springs, Inc. filed with the Commission a Notice of Self Certification of Exempt Wholesale Generator Status pursuant to section 366.7 of the Commission's regulations, as recently promulgated in Order No. 667.

Comment Date: 5 p.m. Eastern Time on March 31, 2006.

6. Pacficorp

[Docket No. ER04–439–003]

Take notice that on August 10, 2004, Pacificorp filed a clean version of its Open Access Transmission Tariff sheets, Substitute Revised Sheet Nos. 165 through 234 to its 4th Revised Electric Tariff Vol. No. 11, pursuant to the Commission's July 30, 2004 Order.

Comment Date: 5 p.m. Eastern Time on March 27, 2006.

7. Macquarie Bank Limited, and Its Direct and Indirect Holding Company Subsidiaries and Managed Entities

[Docket No. PH06–22–000]

Take notice that on March 9, 2006, Macquarie Bank Limited, and Its Direct and Indirect Holding Company Subsidiaries and Managed Entities, filed a Notice of Exemption from the Requirements of The Public Utility Holding Company Act of 2005 pursuant to 18 CFR 366.3(b) and 366.4(b) of the Commission's regulations.

Comment Date: 5 p.m. Eastern Time on March 30, 2006.

8. IPALCO Enterprises, Inc.

[Docket No. PH06–23–000]

Take notice that on March 9, 2006, IPALCO Enterprises, Inc. filed a Petition for Waiver of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c) and 366.4(c) of the Commission's regulations on the basis that it is a single state holding company.

Comment Date: 5 p.m. Eastern Time on March 30, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. 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 online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4137 Filed 3–21–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8048–6]

Science Advisory Board Staff Office; Request for Nominations of Experts To Serve on the Science Advisory Panel on the Distribution of Persistent Chemicals in Wastewater Treatment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces the formation of a new SAB panel known as the Science Advisory Board Advisory Panel on the Distribution of Persistent Chemicals in Wastewater Treatment, and is soliciting nominations for members of the Panel.

DATES: Nominations should be submitted by April 12, 2006 per the instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Mr. Ron Josephson, Designated Federal Officer (DFO), via telephone/voice mail at (202) 343–9986; via e-mail at *josephson.ron@epa.gov*, or at the U.S. EPA Science Advisory Board (1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB can be found on the SAB Web site at: *http://www.epa.gov/sab.* Please direct any technical inquiries related to the study to Dr. David Macarus, who may be reached at (312) 353–5814 or by e-mail at *macarus.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The City of Chicago operates the Claumet Water Reclamation Plant (CWRP), a large Publicly Owned Treatment Works (POTW). The CWRP is the largest POTW in the city, draining an area of approximately 300 square miles. The city and EPA Region V are studying the distribution of polychlorinated biphenyls (PCBs), persistent toxic substances (PTS) and other chemicals in the wastewater influent, treatment plant, effluent, and sludges.

Persistent toxic substances enter the wastewater stream via atmospheric deposition and runoff into urban storm drains, commercial and residential wastewater, or industrial effluent. Some PTSs may also be formed in the wastewater treatment plant. Recent studies indicate the presence of elevated concentrations of mercury, polybrominated diethyl ethers, aklylphenolethoxylates, pharmaceutical compounds, and personal care products in the wastewater treatment plant effluent and receiving waters are the result of high usage or resistance to degradation and removal during treatment. EPA's Region V requested that the Science Advisory Board (SAB) review and advise on their study of the distribution of PTSs within the wastewater treatment plant.

The panel will consider the CWRP study and provide advice and recommendations on sampling design, uncertainties inherent in the investigation, and interpretations of the results. Future studies of fate, emissions, and transport of PTSs will be undertaken, and the panel will provide advice and recommendations on the future design and direction of such studies.

The SAB is a chartered Federal Advisory Committee, established by 42 U.S.C. 4365, to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA policies and actions. The

SAB Staff Office is forming an expert panel, to be known as the Science Advisory Board Advisory Panel on the Distribution of Persistent Chemicals in Wastewater Treatment, to provide early advice in the form of an advisory panel on Region V's proposed wastewater treatment persistent toxics analysis methodology. The SAB panel will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies. Members of the panel will be drawn from experts nominated in response to this notice and other sources. The work of the panel includes reviewing background material, participating in a few public teleconferences, and attending one or more public face-to-face meetings.

Request for Nominations: The SAB Staff Office is requesting nominations for nationally and internationally recognized non-EPA scientists with demonstrated research and applied scientific experience and expertise with respect to chemistry, fate, transport, treatment, and removal of PCBs, PTSs, and other chemicals in wastewater treatment in the following areas: POTWs, plant operations; wastewater systems flow analysis; chemical fate and transport, wastewater and sludge sampling and analysis methods; statistical design and analysis of complex studies; modeling; and handling of sludges.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate individuals qualified in the areas of expertise described above to serve on the SAB Panel. Nominations should be submitted in electronic format through the *Form for Nominating Individuals to Panels of the EPA Science Advisory Board* which can be accessed through a link on the blue navigational bar on the SAB Web site at: *http://www.epa.gov/sab.* To be considered, all nominations must include the information requested on that form.

Anyone who is unable to submit nominations using this form, and any questions concerning any aspects of the nomination process may contact the DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than April 12, 2006. Any questions concerning either this process or any other aspects of this notice should be directed to the DFO. The process for forming a SAB panel is described in the *Overview of the Panel Formation Process at the Environmental Protection Agency, Science Advisory Board* (EPA–SAB–EC–COM–02–010), on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf.*

The SAB Staff Office will acknowledge receipt of the nomination and inform nominees of the panel for which they have been nominated. From the nominees identified by respondents to this **Federal Register** notice (termed the ''Widecast'') and other sources, the SAB Staff Office will develop a smaller subset (known as the ''Short List'') for more detailed consideration. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab/* and will include, for each candidate, the nominee's name and biosketch. Public comments on the Short List will be accepted for 21 calendar days. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates for the Panels.

For the SAB, a balanced panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panels, along with information provided by candidates and information gathered by SAB Staff independently of the background of each candidate (*e.g.,* financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluation of an individual Panel member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Short List candidates will be required to fill-out the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110–48.pdf.*

Dated: March 16, 2006.

Anthony F. Maciorowski,

Associated Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. 06–2775 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0169; FRL–7766–4]

The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Pesticide Operations and Management (WC/POM) Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Pesticide Operations and Management (WC/POM) will hold a 2–day meeting, beginning on April 3, 2006 and ending April 4, 2006. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on April 3, 2006 from 9 a.m. to 5 p.m. and 9 a.m. to 12 noon on April 4, 2006.

ADDRESSES: The meeting will be held at La Fonda, 100 East San Francisco Street, Santa Fe, NM 87501; Telephone number: 505–982–5511.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *mcduffie.georgia@epa.gov*, or Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax (802) 472–6957; e-mail address: *aapco@plainfield.bypass.com*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you all parties interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to

pesticides, and insight into EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate.

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

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

1. *Docket.* EPA has established a docket for this action under Docket identification number (ID) EPA–HQ–OPP–2006–0169; FRL–7766–4. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

C. Tentative Agenda:

1. PPDC Worker Safety Sub Group Update.

2. Proposed Label Identification Numbering Scheme for Printed Pesticide Labels.

3. U.S. Fish and Wildlife Service Consultations and Special Local Need Application.

4. Endangered Species Enforcement Issues Open Discussion

5. New Pesticide Spray Drift Language Regarding Adverse Effects ''For Use By'' Label Statement Proposal.

6. Regional Section 18 Options.

7. Section 18 Changes and Resistance Management.

8. EPA Update/Briefing:

- a. Office of Pesticide Programs Update.
- b. Office of Enforcement Compliance Assurance Update.

9. POM Working Committee Workgroups Issue Papers/Updates

List of Subjects

Environmental protection, insert additional terms as appropriate.

Dated: March 8, 2006.

William R. Diamond,

Direction, Field External Affairs Division, Office of Pesticide Programs

[FR Doc. 06–2602 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0145; FRL–7766–3]

Xylene; Reregistration Eligibility Decision for Low Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide xylene, and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide xylene through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before May 22, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0145, by one of the following methods:

- *http://www.regulations.gov/.* Follow the on-line instructions for submitting comments.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2006–0145. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA –HQ–OPP–2006–0145. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://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 regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically 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/docket.htm/.*

Docket: All documents in the docket are listed in the regulation.gov index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov/* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305– 5805.

FOR FURTHER INFORMATION CONTACT: Mark Perry, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania

Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8024; fax number: (703) 308–7070; e-mail address: *perry.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document 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 for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternitives.

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

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

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. Using a modified, streamlined version of its public participation process, EPA has completed a RED for the low risk pesticide, xylene under section 4(g)(2)(A) of FIFRA. Xylene is composed of three isomers: o-, m-, and p-xylene. Most of the products originally registered as xylene have been either cancelled, the formulation have been modified, and/or have been considered as an inert ingredient. The only active ingredient use assessed in this RED is the use of xylene as an aquatic weed ready-to-use herbicide. The inert uses have been assessed independently. EPA has determined that the data base to support reregistration is substantially complete and that products containing xylene will be eligible for reregistration. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address any concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing xylene.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the xylene tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like xylene, which pose few risk concerns, have low use, affect few if any stakeholders, and require little risk mitigation. Once EPA assesses uses and risks for such low risk pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the xylene RED.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Xylene, however, poses few risks that require mitigation. The Agency therefore is issuing the xylene RED, its risk assessments, and related support materials simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for xylene. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the xylene RED will be implemented as it is now presented.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21

U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 2, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 06–2707 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0162; FRL–7763–9]

Carbofuran Revised Risk Assessments; Notice of Availability and Solicitation of Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's revised risk assessments for the N-methyl carbamate pesticide carbofuran. In addition, this notice solicits public comment on risk reduction options for carbofuran and an initial alternatives analysis. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing an Interim Reregistration Eligibility Decision (IRED) for carbofuran through the full, 6-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before May 22, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0162, by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Hand Delivery: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA.

Attention: Docket ID number EPA–HQ–OPP–2005–0162. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0162. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://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 regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically 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/docket.htm/*.

Docket: All documents in the docket are listed in the regulation.gov index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov/* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Stephanie Plummer, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0076; fax number: (703) 308–7042; e-mail address: *plummer.stephanie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

i. Identify the document 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 for it to be reproduced.

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

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

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

II. Background

A. What Action is the Agency Taking?

EPA is making available the Agency's revised risk assessments, a response to comments, and related documents for carbofuran. The Agency's environmental fate and effects risk assessment was initially issued for comment through a **Federal Register** notice published on June 24, 2005 (70 FR 36586) (FRL–7719–2) and the human health risk assessment was initially issued for comment through a **Federal Register** notice published on September 14, 2005 (70 FR 54377) (FRL–7731–4). EPA also is soliciting public comment on risk reduction options for carbofuran and an initial alternatives analysis. EPA developed the risk assessments for carbofuran as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Carbofuran works as a cholinesterase inhibitor and is used to treat pests of food and non-food crops as either a flowable or granular formulation. It is registered for food uses, which include alfalfa, artichoke, banana, barley, coffee, corn (field, pop, and sweet), cotton seed, cucurbits (cucumber, melons, and squash), grapes, oats, pepper, plantain, potato, sorghum, soybean, spinach, sugar beet, sugarcane, sunflower, and wheat. Carbofuran is also registered for non-food uses, which include agricultural fallow land, cotton, ornamental and/or shade trees, ornamental herbaceous plants, ornamental non-flowering plants, ornamental woody shrubs and vines, pine, and tobacco. Carbofuran is applied by aircraft or ground equipment by methods that include broadcast, banded, in furrow, and drip irrigation.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for carbofuran. Risks of concern associated with the use of carbofuran are: human dietary and occupational risks, and ecological risks to birds and mammals. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, carbofuran is being reviewed through the full 6-Phase public participation process.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for carbofuran. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

After considering comments received, EPA will develop and issue for comment the carbofuran IRED. The decisions presented in this IRED may be supplemented by further risk mitigation measures when EPA considers its cumulative assessment of the N-methyl carbamate pesticides.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 9, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 06–2708 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0161; FRL–7768–5]

Poly(hexamethylenebiguanide) hydrochloride; Para Tertiary-Amylphenol and Salts; 1, 2-Benzisothiazolin-3-one; and Azadioxabicyclooctane Reregistration Eligibility Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decisions (REDs) for the pesticides poly(hexamethylenebiguanide) hydrochloride hereafter referred to as PHMB, para tertiary-amylphenol and salts hereafter referred to as 4-t, 1, 2-benzisothiazolin-3-one hereafter referred to as BIT and azadioxabicyclooctane hereafter referred to as Aza. This notice opens a public comment period on these documents. The Agency's risk assessments and other related documents are also available in the Dockets for PHMB, 4-t, BIT and Aza. EPA has reviewed PHMB, 4-t, BIT and Aza through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before May 22, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number, by one of the following methods: For PHMB, docket identification (ID) number EPA–HQ–OPP–2004–0305; for 4-t, docket identification (ID) number EPA–HQ–OPP–2005 –0181; for BIT, docket identification (ID) number EPA–HQ–OPP–2005–0200; for Aza, docket identification (ID) number EPA–HQ–OPP–2005–0186.

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, DC 20460–0001.

Hand delivery. Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2004–0305, for PHMB; Docket ID number EPA–HQ–OPP–2005–0181, for 4-t; Docket ID number EPA–HQ–OPP–2005–0200, for BIT; and Docket ID number EPA–HQ–OPP–2005–0186, for Aza. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. 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 by the specific docket ID number– as listed above. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://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 regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically 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/docket.htm/*.

Docket: All documents in the docket are listed in the regulation.gov index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov/* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: For PHMB, contact Jennifer Slotnick, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, DC 20460–0001; telephone number: (703) 305–0601; fax number: (703) 308–8481; e-mail address: *slotnick.jennifer@epa.gov.*

For 4-t, contact ShaRon Carlisle, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, DC 20460–0001; telephone number: (703) 308–6427; fax number: (703) 308–8481; e-mail address: *carlisle.shaRon@epa.gov.*

For BIT, contact Rebecca Miller, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, DC 20460–0001; telephone number: (703) 305–0012; fax number: (703) 308–8481; e-mail address: *miller.rebecca@epa.gov.*

For Aza, contact ShaRon Carlisle, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, DC 20460–0001; telephone number: (703) 308–6427; fax number: (703) 308–8481; e-mail address: *carlisle.shaRon@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document 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.

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

v. If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

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

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

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

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticides PHMB, 4-t, BIT and Aza under section 4(g)(2)(A) of FIFRA.

PHMB is used as a fungicide, algicide, and sanitizer in swimming pools; preservative for cut flowers; materials preservative; bacteriostat in industrial processes and water systems; and hard surface disinfectant (food and non-food contact surfaces). End-use products are formulated as soluble concentrates, as solids, as ready-to-use solutions, and in water-soluble packaging.

4-t is used in disinfectants, hard non-porous surface sanitizers and air deodorizing products used in agricultural premises, in food handling establishments, commercial, institutional and industrial premises, residential, public access premises and in medical settings. These products primarily are used on hard, non-porous surfaces (walls, floors, tables, fixtures) textiles (clothing, diapers, mattresses and bedding), carpets, medical instruments and agricultural equipment.

BIT is an antimicrobial that is used as an industrial preservative for the protection of water-based adhesives, caulks, sealants, grouts, spackling, ready-mixed cements, ready-mixed wallboard compounds, aqueous compositions such as emulsion paints, aqueous slurries, home cleaning and car care products, laundry detergents, fabric softeners, stain removers, inks, photographic processing solutions, paints and stains, titanium dioxide slurries, oil in water emulsions, latices, metalworking fluids, casein/rosin dispersions, textile spin-finish solutions, pesticide formulations, tape joint compound, leather processing solutions, preservation of fresh animal hides and skins, and for offshore and terrestrial gas/oil drilling muds and packer fluids preservation. BIT is also used as an inert ingredient in a variety of products as a materials preservative. Exposures and risks from the use of products containing BIT as both the active and inert ingredients are assessed in this RED. End-use products are formulated as either a soluble, ready-to-use, or flowable concentrates (all of which are considered to be liquids). Aza consists of an equilibrium mixture of three chemicals (I: 5-hydroxymethoxymethyl-1-aza-3,7-dioxabicyclo(3,3,0)octane; II: 5-hydroxymethyl-1-aza-3,7-dioxabicyclo(3,3,0)octane; III: 5-hydroxypoly(methylene-oxy)methyl-1-aza-3,7-dioxabicyclo(3,3,0)octane). These chemicals cannot be divided into components for individual testing and the three of them will be referred to as azadioxabicyclooctane in the Reregistration Eligibilty Decision. This mixture is registered as a preservative for antimicrobial control in the following use sites: Oil recovery drilling muds and flooding fluids; industrial adhesives and coatings (natural based and synthetic); latex and polymer emulsions; metalworking cutting fluids; latex paints; paper coatings; caulks and sealants; inks; pigment dispersion and pigment slurry; and textile fiber finishes that are not intended as clothing. Azadioxabicyclooctane has been cleared by the Food and Drug Administration (FDA) for use as an antibacterial preservative in paper and paperboard products that are limited to dry food contact only in 21 CFR 176.180 as well as a component in paper adhesives in 21 CFR 175.105.

EPA has determined that the data base to support reregistration is substantially complete and that products containing PHMB, 4-t, BIT and Aza are eligible for reregistration provided the risks are mitigated either in the manner described in the RED or by another means that achieves equivalent risk reduction. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing PHMB, 4-t, BIT and Aza.

Although, the RED decisions were made in FY 04 (PHMB) and FY05 (4-t, BIT and Aza), certain components of the documents, which did not affect the final regulatory decisions, were undergoing final editing at that time. None of these additions or changes alter the conclusions documented in the PHMB, 4-t, BIT and Aza REDs now available for comment.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, PHMB, 4-t, BIT and Aza were reviewed through the modified 4-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for PHMB, 4-t, BIT and Aza.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the PHMB, 4-t, BIT and Aza REDs for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Dockets for PHMB, 4-t, BIT and Aza. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the PHMB, 4-t, BIT and Aza REDs will be implemented as they are now presented.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, pesticides and pests.

Dated: March 9, 2006.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 06–2711 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0150; FRL–7768–4]

Trichloromelamine, Sulfonated Oleic Acid-Sodium Salt, and Triethylene Glycol; Reregistration Eligibility Decision for Low Risk Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decisions (RED) for the pesticides trichloromelamine, sulfonated oleic acid-sodium salt and triethylene glycol, and opens a public comment period on these documents, related risk assessments, and other support documents. EPA has reviewed the low risk pesticides trichloromelamine, sulfonated oleic acid-sodium salt and triethylene glycol through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before May 22, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number, by one of the following methods:

For trichloromelamine, docket identification (ID) number EPA–HQ–OPP–2005–0262.

For sulfonated oleic acid-sodium salt, docket ID number EPA–HQ–OPP–2005–0261.

For triethylene glycol, docket ID number EPA–HQ–OPP–2005–0250 by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ– OPP–2005–0262 for trichloromelamine; docket ID number EPA–HQ–OPP–2005–0261 for sulfonated oleic acid-sodium salt and docket ID number EPA–HQ–OPP–2005–0250 for triethylene glycol. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for thedocket facility is (703) 305–5805. 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 the chemical specific docket ID number (listed in **ADDRESSES** section). EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://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 regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically 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/docket.htm/*.

Docket: All documents in the docket are listed in the regulation.gov index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov/* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: For trichloromelamine, contact Jennifer Slotnick, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0601; fax number: (703) 308–8481; e-mail address: *slotnick.jennifer@epa.gov.*

For sulfonated oleic acid-sodium salt, contact Kathryn Jakob, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1328; fax number: (703) 308–8481; e-mail address: *jakob.kathryn@epa.gov.*

For triethylene glycol, contact Heather Garvie, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; fax number: (703) 308–8481 e-mail address: *garvie.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. Using a modified, streamlined version of its public participation process, EPA has completed a Registration Eligibility Decision (RED) for the low risk pesticides, trichloromelamine, sulfonated oleic acid and triethylene glycol under section 4(g)(2)(A) of FIFRA.

Trichloromelamine is a sanitizer and disinfectant with direct and indirect food uses, as well as non-food uses. It is used on hard surfaces and as a fruit and vegetable wash. End-use products are formulated as a soluble concentrate (in powder form). Trichloromelamine currently has a tolerance exemption as an antimicrobial pesticide when, ready for use, the end-use concentration does not exceed 200 parts per million (40 CFR 180.940(c)) when applied to food processing equipment and utensils.

As an active ingredient, sulfonated oleic acid-sodium salt is used as a bactericide and sanitizer for non-porous dairy, beverage, brewery and food processing equipment. Sulfonated oleic acid-sodium salt is formulated as a liquid concentrate. The RED reassesses the exemption from the requirement for a tolerance for sulfonated oleic acid-sodium salt. The tolerance exemption for sulfonated oleic acid-sodium salt is listed in 40 CFR 180.940 (c) (69 FR 23136, April 28, 2004) (FRL–7335–4).

Triethylene glycol is used as a bacteriostat (against odor-causing bacteria) for air sanitization and deodorization. In combination with other active ingredients, it is used as a fungicide, virucide and miticide for disinfection of hard, non-porous surfaces and as an insecticide (against lice) by direct application to caged birds and to the cage. For these uses, triethylene glycol is formulated primarily as a pressurized liquid. This document also addresses the exposures from the use of this pesticide as an inert ingredient. As an inert ingredient, triethylene glycol facilitates delivery of formulated pesticide chemical products that are used as herbicides, fungicides, insecticides, growth regulators and attractants on a wide variety of agricultural commodities. In addition to the above, triethylene glycol is approved by the Food and Drug Administration (FDA) as a preservative for food packaging adhesives as listed in 21 CFR 175.105. Currently, however, there are no EPA registered products for this use. Triethylene glycol also has an indirect food additive regulation 21 CFR 177.1200 (April 1, 2004) for its use as a plasticizer in cellophane. This use is regulated by the FDA.

EPA has determined that the data base to support reregistration is substantially complete and that products containing trichloromelamine, sulfonated oleic acid-sodium salt and triethylene glycol will be eligible for reregistration, provided the risks are mitigated either in the manner described in the RED or by another means that achieves equivalent risk reduction. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address any concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing trichloromelamine, sulfonated oleic acid-sodium salt and triethylene glycol.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the trichloromelamine, sulfonated oleic acid-sodium salt and triethylene glycol tolerances included in this notice.

Although the RED decisions were made in FY03 (for triethylene glycol) and FY05 (for trichloromelamine and sulfonated oleic acid-sodium salt), certain components of the documents which did not affect the final regulatory decision, were undergoing final editing at that time. None of these additions or changes alter the conclusions documented in the FY03 or FY05 REDs.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like trichloromelamine, sulfonated oleic acid-sodium salt and triethylene glycol, which pose few or no risk concerns, affect few if any stakeholders, and require little or no risk mitigation. Once EPA assesses uses and risks for such low risk pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the REDs.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate

pesticide risks. These three cases, however, poses few or no risks that require mitigation. The Agency therefore is issuing the trichloromelamine RED, the sulfonated oleic acid-sodium salt RED as well as the triethylene glycol RED, its risk assessments, and related support materials simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for the specific active ingredient. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the RED will be implemented as it is now presented.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental Protection, Pesticides and Pests.

Dated: March 9, 2006.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 06–2710 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0253; FRL–7768-9]

Propylene Oxide; Notice of Receipt of Request to Terminate Bird Seed Uses on Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily terminate the use of the pesticide propylene oxide (PPO) on bird seed products. The request would terminate non-food PPO use as an insecticidal fumigant for the control of stored product insects in bird seed. The request would terminate bird seed use for all PPO product(s) registered in the U.S. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws their request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before April 21, 2006.

ADDRESSES: Submit your comments, identified by docketidentification (ID) number EPA–HQ–OPP–2005–0253, by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Hand Delivery: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA.

Attention: Docket ID number EPA–HQ–OPP–2005–0253. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0253. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://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 regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically 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/docket.htm/*.

Docket: All documents in the docket are listed in the regulation.gov index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov/* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Bartow, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0065; fax number: (703) 308–8041; e-mail address: *bartow.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

i. Identify the document 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 for it to be reproduced.

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

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

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

II. Background on the Receipt of Requests to Amend Registrations to Delete Uses

This notice announces receipt by EPA of a request from registrant ABERCO, Inc. to voluntarily terminate bird seed uses of 47870-1, 47870-2, and 47870-3 PPO product registrations. PPO is an insecticidal fumigant used on several food items such as processed spices, cocoa (beans and powder), and in-shell and processed nutmeats (except peanuts). PPO also has nonfood uses for bird seeds, cosmetic articles, gums, ores, packaging, pigments, pharmaceutical materials, and discarded nut shells prior to disposal. In a letter dated January 26, 2006, ABERCO, Inc. requested EPA to terminate PPO's use on bird seed for pesticide product registrations identified in this notice (Table 1). Specifically, ABERCO, Inc. requests that the nonfood use of PPO as an insecticidal fumigant for the control of stored product insects in bird seed be terminated. ABERCO, Inc. requests provisions for sale, distribution, and use of existing stocks, as EPA defined that term in a document published on June 26, 1991 at 56 Fed. Reg. 29362, as follows:

1. Registrants may sell and distribute existing stocks for one year from the date of this letter making the use termination request, and

2. The product may be sold, distributed, and used by people other than the registrant until their stocks have been exhausted, provided that such sale, distribution, and use complies with the EPA-approved label and labeling of the product. There will be no more PPO pesticide products registered in the United States for bird seed use.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from a registrant to terminate bird seed uses of PPO product registrations. The affected products and the registrant making the requests are identified in Table 1 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The PPO registrant has requested that EPA waive the 180-day comment period. EPA will provide a 30-day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations.

TABLE 1.— PPO PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product name	Company
47870-1	Propylene Oxide	ABERCO, Inc.
47870-2	Propylene Oxide Technical	ABERCO, Inc.
47870-3	Propoxide 892	ABERCO, Inc.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of PPO

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before April 21, 2006. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

In any order issued in response to this request for amendment(s) to terminate bird seed use, the Agency proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 1:

1. The registrant may sell and distribute existing stocks for one year from the date of this letter making the use termination request, and

2. The product may be sold, distributed, and used by people other than the registrant until their stocks have been exhausted, provided that such sale, distribution, and use complies with the EPA-approved label and labeling of the product.

If the request for voluntary termination is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved lable on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is non consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 9, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 06–2713 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2006–0165; FRL–7766–7]

Notice of Filing of Pesticide Petitions for Establishment of a Regulation for Residues of Dimethenamid in or on Various Food and Feed Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of dimethenamid, (R,S)–2–chloro-N-[(1–methyl–2–methoxy) ethyl]-N-(2,4–dimethylthien–3–yl)-acetamide in or on various food and feed commodities.

DATES: Comments must be received on or before April 21, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP–2006–0165 and pesticide petition numbers (PPs) 4E6844 and 0F6138, by one of the following methods:

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

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP–2006–0165. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP–2006–0165. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://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 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 at regulations.gov, your e-mail address will be captured automatically 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/*.

Docket: All documents in the docket are listed in the regulation.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 at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; 703–305–6463; e-mail: *madden.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document 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 for it to be reproduced.

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

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

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

II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that these pesticide petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of these pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petitions summary.

New Tolerance

1. *PP 4E6844.* Interregional Research Project No. 4 (IR–4), Rutgers University, 681 U. S. Highway #1 South, North Brunswick, NJ 08902–3390, proposes to establish tolerances for residues of the dimethenamid, (R,S)–2–chloro-N-[(1–methyl–2–methoxy) ethyl]-N-(2,4–dimethylthien–3–yl)-acetamide in or on food commodities onion, green; onion, Welsh; leek; and shallot, fresh leaves at 0.01 parts per million (ppm);

2. *PP 0F6138.* Grass, forage at 0.05 ppm; grass, hay at 0.30 ppm; grass, straw at 0.01 ppm; and grass, seed screenings at 0.01 ppm.

The proposed analytical method uses extraction and clean-up followed by quantification with capillary column gas chromatography using thermionic nitrogen specific detector. A gas spectrometry/mass spectrometry (GS/MS) method for identification is also available. This method is not selective towards the dimethenamid isomer and is therefore valid for residues from both racemic dimethenamid and the enriched isomer dimethenamid-P. Tolerances are proposed based on a non-isomer specific basis.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 6, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 06–2634 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2005–0537; FRL–7767–8]

Notice of Filing of Pesticide Petitions for Establishment of Regulations for Residues of Ethofumesate and Its Metabolites in or on Various Food Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of the herbicide ethofumesate (2–ethoxy–2,3–dihydro–3,3–dimethyl–5–benzofuranyl methanesulfonate) and its metabolites NC 8493 and NC 9607 (both calculated as the parent compound) in or on carrots (with regional restriction for use in Washington and Oregon only), garden beets (tops and roots), onion dry bulb, garlic bulb, and shallots.

DATES: Comments must be received on or before April 21, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP–2005–0537 and pesticide petition numbers (PPs) 3E6564, 3E6565, and 5E6914, by one of the following methods:

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

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP–2005–0537. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP–2005–0537. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://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 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 at regulations.gov, your e-mail address will be captured automatically 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/*.

Docket: All documents in the docket are listed in the regulation.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 at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; 703–305–6463; e-mail: *madden.barbara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document 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 for it to be reproduced.

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

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

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

II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C.346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that these pesticide petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated

the sufficiency of the submitted data at this time or whether the data support granting of these pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerances

1. *PP 3E6564*. Interregional Research Project No. 4 (IR–4), 681 U. S. Highway No. 1 South, North Brunswick, NJ 08902–3390, proposes to establish a tolerance for residues of the herbicide ethofumesate (2–ethoxy–2,3–dihydro–3,3–dimethyl–5–benzofuranyl methanesulfonate) and its metabolites NC 8493 and NC 9607 (both calculated as the parent compound) in or on food commodities garden beet tops at 4.0 parts per million (ppm) and garden beet roots at 0.5 ppm; and

2. *PP 3E6565*. Carrots (with regional restriction for use in Washington and Oregon only) at 10.0 ppm; and

3. *PP 5E6914*. Onion dry bulb, garlic bulb, and shallots at 0.3 ppm.

Analytical methods have been developed and validated for the determination of ethofumesate and its metabolites NC 9607 and NC 8493 in sugar beet (roots and tops), meat, and milk. The method has also been shown to capture NC 20645 as NC 9607 in sugar beet and milk. Therefore, reported residues of NC 9607 include any NC 20645 that may be present. Ethofumesate and its related residues are extracted in a two-part process and quantified using gas chromatography equipped with flame photometric detector (GC-NPD) operated in sulfur mode. The method limit of quantification is 0.05 ppm. Therefore, adequate analytical methodology is available for enforcement purposes and it allows detection of residues at or above the proposed tolerances.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 13, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 06–2635 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2005–0542; FRL–7769–7]

Notice of Filing of Pesticide Petitions for Establishment of Regulations for Residues of the Insecticide Imidacloprid in or on Various Food Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of the insecticide imidacloprid, 1–[(6–chloro–3–pyridinyl)methyl]-N-nitro–2–imidazolidinimine in or on various food commodities.

DATES: Comments must be received on or before April 21, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP–2005–0542 and pesticide petition numbers (PPs) 3E6543, 3E6561, 3E6738, 3E6760, 5E6920, 5E6921, 5E6922, and 5E6923, by one of the following methods:

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

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP–2005–0542. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP–2005–0542. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://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 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 at regulations.gov, your e-mail address will be captured automatically 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/*.

Docket: All documents in the docket are listed in the regulation.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 at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division, (7505C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW,

Washington, DC 20460–0001; (703) 305–6463; e-mail: *madden.barbara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document 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 for it to be reproduced.

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

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

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

II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

1. *PP 3E6543.* Interregional Research Project No. 4 (IR–4), 681 U. S. Highway No. 1 South, North Brunswick, NJ 08902–3390, proposes to establish a tolerance for residues of the insecticide imidacloprid, 1–[(6–chloro–3–pyridinyl)methyl]-N-nitro–2–imidazolidinimine in or on food commodities [caneberry subgroup 13–A at 0.05 parts per million (ppm);

2. *PP 3E6561.* coffee at 0.6 ppm;

3. *PP 3E6738.* seed of: Black mustard, borage, crambe, field mustard, flax, Indian mustard, Indian rapeseed, rapeseed, safflower, and sunflower at 0.05 ppm;

4. *PP 3E6760.* atemoya, biriba, cherimoya, custard apple, ilama, soursop, and sugar apple at 0.2 ppm;

5. *PP 5E6920.* almond hulls at 2.5 ppm; and pistachio and tree nut group 14 at 0.01 ppm;

6. *PP 5E6921.* pomegranate at 0.7 ppm;

7. *PP 5E6922.* banana at 0.6 ppm; and

8. *PP 5E6923.* herbs subgroup 19–A dried at 62.0 ppm; and herbs subgroup 19–A fresh at 6.0 ppm.

The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6–chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary gas chromatography mass spectrometry (GS MS) selective ion monitoring. There is a confirmatory method specifically for imidacloprid and several metabolites utilizing GC/MS and high power liquid chromatography ultraviolet (HPLC UV) which has been validated by the EPA as well. Imidacloprid and its metabolites are stable for at least 24 months in the commodities when frozen.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 13, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 06–2636 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0176; FRL–7767–4]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following pesticide applicant. EUPs permit use of a pesticide for experimental or research purposes only in accordance with the limitations in the permits.

FOR FURTHER INFORMATION CONTACT: Phil Hutton, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8260; e-mail address: *hutton.phil@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, 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 information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0176. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. EUPs

EPA has issued the following EUPs:

82681–EUP–1. Issuance. Agricultural Research Initiatives (ARI) Incorporated, 700 Research Center Blvd., Fayetteville, AR 72701. This EUP allows the use of 414 pounds of the herbicide active ingredient *Colletotrichum gloeosporioides* f.sp. *aeschynomene* on 5,000 acres of rice to evaluate the control of northern joint vetch. The active ingredient consists of viable microbial spores and fermentation medium and comprises 45% by weight of the end product, LockDown. The program is authorized only in the States of Arkansas, Louisiana, and Mississippi. The EUP is effective from February 1, 2006 to February 1, 2007.

82681–EUP–2 and *82681–EUP–3*. Issuances. Agricultural Research Initiatives (ARI) Incorporated, 700 Research Center Blvd., Fayetteville, AR 72701. Each EUP allows the use of 414 pounds of the herbicide active ingredient *Colletotrichum gloeosporioides* f.sp. *aeschynomene* on 5,000 acres of rice to evaluate the control of northern joint vetch. For each of these EUPs, the active ingredient consists of viable microbial spores and fermentation medium and comprises 40% by weight of each end product, LockDown EF for *82681–EUP–2* and LockDown Plus for *82681–EUP–3*. The program is authorized only in the States of Arkansas, Louisiana, and Mississippi. The EUPs are effective from February 27, 2006 to February 27, 2007.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: March 13, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 06–2709 Filed 3–21–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

March 14, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments May 22, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit you comments by e-mail send them to: *PRA@fcc.gov.* To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an email to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0921.

Title: Petitions for LATA Boundary Modification for the Deployment of Advanced Services.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4.

Estimated Time Per Response: 8 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 8 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) after this 60 day comment period as an extension (no change in requirements) in order to obtain the full three year clearance from them.

Bell Operating Companies (BOCs) that petition for Local Access and Transport Areas (LATAs) boundary modifications to encourage the deployment of advances service on a reasonable and timely basis are required to include information in accordance with specified criteria. In order to review requests for LATA modifications promptly and efficiently, it is necessary

that BOCs provide the information specified. The criteria will serve to ease the petition process on BOCs by providing guidelines that will serve to narrow the scope of their petitions to the issues and facts that the Commission is primarily concerned with. In addition, the request will also expedite the petition review process by ensuring that petitioners will provide all the information the Commission needs to properly review the petitions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–2772 Filed 3–21–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

March 13, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments May 22, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to: *PRA@fcc.gov.* To submit your comments by U.S. mail, mark it to the attention of Leslie F. Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Leslie F. Smith at (202) 418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0737.

Title: Disclosure Requirements for Information Services Provided under a Pre-subscription or Comparable Arrangement.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 1,000.

Estimated Time per Response: 5 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 5,000 hours.

Total Annual Costs: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 64.1501(b) imposes disclosure requirements on information providers that offer ''presubscribed'' information services. The requirements are intended to ensure that consumers receive information regarding the terms and conditions associated with these services before they enter into a contract to subscribe to them.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–4140 Filed 3–21–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 06–489]

Notice of Debarment; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of the conviction of Premio, Inc., f/k/a Premio Computers, Inc. (''Premio'') for conspiracy to suppress and eliminate competition in violation of the Sherman Antitrust Act, 15 U.S.C. 1, and for mail fraud and aiding and abetting in violation of 18 U.S.C. 1341 and 2. Consequently, pursuant to 47 CFR 54.521, this letter constitutes official notice of Premio's suspension from the schools and libraries universal service support mechanism (''E-rate program''). In addition, the Enforcement Bureau (''Bureau'') hereby notifies Premio that we are commencing debarment proceedings against it.

DATES: Within 90 days of receipt of any opposition to Premio's suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide Premio with notice of its decision to debar. If the Bureau decides to debar Premio, its decision will become effective upon the earlier of Premio's receipt of a debarment notice or publication of the decision in the **Federal Register**. March 22, 2006, Premio's request must be received within 30 days after it receives this letter or after notice is published in the **Federal Register**, whichever comes first.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–0843 or e-mail at *diana.lee@fcc.gov.* If Ms. Lee is unavailable, you may contact Eric Bash by phone at (202) 418–1188 or e-mail at *eric.bash@fcc.gov.*

SUPPLEMENTARY INFORMATION: These actions constitute the conduct or transactions upon which this debarment proceeding is based. Moreover, Premio's conviction on the basis of these acts falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules. Therefore, pursuant to § 54.521(a)(4) of the Commission's rules, Premio's conviction requires the Bureau to commence debarment proceedings against it. The complete text of the suspension letter is available for public inspections and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402,

Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

William H. Davenport,

Chief, Investigations and Hearings Division, Enforcement Bureau.

The notice of suspension and of proposed debarment letter follows:

February 28, 2006.

[DA 06–489]

Via Certified Mail

Return Receipt Requested

Mr. Tom Tsao, Vice President, Premio, Inc., 918 Radecki Court, City of Industry, CA 91748.

Re: Notice of Suspension and of Proposed Debarment, File No. EB–06–IH–0853

Dear Mr. Tsao: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of the conviction of Premio, Inc., f/k/a Premio Computers, Inc. (''Premio'') for conspiracy to suppress and eliminate competition in violation of the Sherman Antitrust Act, 15 U.S.C. 1, and for mail fraud and aiding and abetting in violation of 18 U.S.C. 1341 and 2.[1] Consequently, pursuant to 47 CFR 54.521, this letter constitutes official notice of Premio's suspension from the schools and libraries universal service support mechanism (''E-rate program''). In addition, the Enforcement Bureau (''Bureau'') hereby notifies Premio that we are commencing debarment proceedings against it.[2]

Notice of Suspension

Pursuant to section 54.521(a)(4) of the Commission's rules,[3] Premio's conviction requires the Bureau to suspend it from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[4] Premio's suspension becomes effective upon the earlier of its receipt of this letter or publication of notice in the **Federal Register.**[5]

Suspension is immediate pending the Bureau's final debarment determination. Premio may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Premio's request must be received within 30 days after it receives this letter or after notice is published in the **Federal Register**, whichever comes first.[6] Such requests, however, will not ordinarily be granted.[7] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[8] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[9]

I. Notice of Proposed Debarment

A. Reasons for and Cause of Debarment

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[10] Premio pled guilty to antitrust, mail fraud and aiding and abetting charges for activities in connection with its participation in the E-rate program with two school districts in California.

In connection with the antitrust crime charged against Premio, the company admitted that it conspired with one or more vendors of equipment and services related to telecommunications, Internet access and/or internal connections to suppress and eliminate competition for E-rate projects in the West Fresno Elementary School District by allocating contracts and submitting fraudulent and non-competitive bids. More specifically, the company discussed prospective bids for the E-rate project with its co-conspirators, agreed with them who would serve as lead contractor and subcontractor on the project, and worked with consultants who awarded, or influenced the award of, contracts to the conspirators, and disqualified bids from non-conspirators.[11] In connection with the mail fraud charged against Premio, the company admitted that it sought payment of more than $1 million in E-rate funding for telecommunications servers and related installation and maintenance it was purportedly going to provide to the Highland Park School District in California, when in fact it actually delivered ineligible video conferencing equipment.[12]

These actions constitute the conduct or transactions upon which this debarment proceeding is based.[13] Moreover, Premio's conviction on the basis of these acts falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.[14] Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, Premio's conviction requires the Bureau to commence debarment proceedings against it.

B. Debarment Procedures

Premio may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[15] Absent extraordinary circumstances, the Bureau will debar Premio.[16] Within 90 days of receipt of any opposition to Premio's suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide Premio with notice of its decision to debar.[17] If the Bureau decides to debar Premio, its decision will become effective upon the earlier of Premio's receipt of a debarment notice or publication of the decision in the **Federal Register**.[18]

C. Effect of Debarment

If and when Premio's debarment becomes effective, it will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for some period of time.[19]

Please direct any responses to the following address: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C443, 445 12th Street, SW., Washington, DC 20554.

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[1] Any further reference in this letter to ''your conviction'' refers to Premio's February 22, 2006 guilty plea and conviction of these counts. *United States* v. *Premio, Inc.,* Criminal Docket No. 3:06–CR–06–0086 MMC, Plea Agreement (N.D.Cal. filed Feb. 22, 2006) (''*Premio Plea Agreement*''). The Order accepting this plea agreement was signed by the Court on February 22, 2006 and entered on February 23, 2006, and the Plea Agreement was entered on February 24, 2006.

[2] 47 CFR 54.521; 47 CFR 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 CFR 54.521).

[3] 47 CFR 54.521(a)(4). *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225–9227, ¶¶ 67–74 (2003) (''*Second Report and Order*'').

[4] *Second Report and Order,* 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. 254; 47 CFR 54.502–54.503; 47 CFR 54.521(a)(4).

[5] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.521(e)(1)

[6] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(4).

[7] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70.

[8] 47 CFR 54.521(e)(5).

[9] See Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5), 54.521(f).

[10] Second Report and Order, 18 FCC Rcd at 9225, ¶ 66. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.'' 47 CFR 54.521(a)(6).

[11] *See Premio Plea Agreement* at 5.

[12] *See Premio Plea Agreement* at 5–7.

[13] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i).

[14] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.'' 47 CFR 54.521(c). Such activities ''include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section ([47 CFR] § 54.500 *et seq.*).'' 47 CFR 54.521(a)(1).

[15] *See Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i), 54.521(e)(3).

[16] Second Report and Order, 18 FCC Rcd at 9227, ¶ 74.

[17] See id., 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5).

[18] Id. The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.521(f).

[19] Second Report and Order, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.521(d), 54.521(g).

If Premio submits its response via hand-delivery or non-United States Postal Service delivery (e.g., Federal Express, DHL, etc.), please send the response to Ms. Lee at the following address: Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, MD 20743.

If Premio has any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov.* If Ms. Lee is unavailable, you may contact Eric Bash by telephone at (202) 418–1188 and by e-mail at *eric.bash@fcc.gov.*

Sincerely yours,

William H. Davenport,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Paul J. Loh, Esq., Willenken Wilson Loh & Lieb, LLP.
Michael F. Wood, Esq., United States Department of Justice, Antitrust Division.
Sara Winslow, Esq., Assistant United States Attorney.
Alicia Bentley, Esq., United States Department of Justice, Civil Division.
Kristy Carroll, Esq., USAC.

[FR Doc. E6–4138 Filed 3–21–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting Friday, March 17, 2006

March 10, 2006.

The Federal Communications Commission will hold an open meeting on the subjects listed below on Friday, March 17, 2006, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Media	*Title:* Children's Television Obligations of Digital Television Broadcasters (MM Docket No. 00–167). *Summary:* The Commission will consider a Second Further Notice of Proposed Rule-making concerning the Joint Proposal of Industry and Advocates on Reconsideration of Children's Television Rules.
2	Wireless Telecommunications	*Title:* The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010 (WT Docket No. 96–86). *Summary:* The Commission will consider an Eighth Notice of Proposed Rulemaking seeking comment on public safety communications needs in the 700 MHz band (746–776 MHz and 794–806 MHz).
3	Office of Managing Director	*Title:* Establishment of the Public Safety and Homeland Security Bureau. *Summary:* The Commission will consider an Order creating a Public Safety and Homeland Security Bureau and amending the rules to reflect the function of this Bureau.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Make your request as early as possible; please allow at least 5 days advance notice. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–2826 Filed 3–20–06; 1:50 pm]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011887–003.

Title: Zim/CCNI Space Charter Agreement.

Parties: Zim Integrated Shipping Services, Ltd. (''Zim'') and Compania Chilena de Navegacion Interoceanica (''CCNI'').

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes the specific space allocation in the Jamaica/U.S. West Coast trade and provides for CCNI to charter space from Zim on a used basis only, subject to space availability on each sailing in that trade.

Agreement No.: 011898–002.

Title: APS Joint Service Agreement.

Parties: BBC Chartering & Logistic GmbH & Co. KG (''BBC''), Clipper Elite Carriers Ltd. (''Clipper'') and Asia Project Services Ltd. (''APS'').

Filing Party: Matthew Thomas, Esq.; Troutman Sanders LLP; 401 9th Street, NW.; Suite 1000; Washington, DC 20004–2134.

Synopsis: The amendment expands the geographic coverage to include the Indian Subcontinent, the Middle East, and Africa.

Agreement No.: 011950.

Title: HSDG/FOML Agreement.

Parties: Hamburg-Sud and FESCO Ocean Management Limited.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The agreement sets forth certain understandings between the parties relating to the acquisition by Hamburg-Sud of certain assets of FESCO Ocean Management in the trade between the United States and Australia, New Zealand, and the Pacific Islands.

Agreement No.: 011951.

Title: Nina (Bermuda) Ltd. dba FTD Shipping Lines/G&G Marine, Inc. Space Charter Agreement.

Parties: Nina (Bermuda) Ltd., dba FTD Shipping Lines (''FTD Shipping''), and G&G Shipping (''G&G Shipping'').

Filing Party: Roy R. Sumner; Sumner Tariff Service, Inc.; 1012 14th Street, NW.; Suite 905; Washington, DC 20005.

Synopsis: The agreement authorizes FTD Shipping to charter space to G&G Shipping on its vessels between Port Everglades, Florida, and Grand Turk, Turks and Caicos Islands, on an ''as-needed/as-available'' basis.

Agreement No.: 011952.

Title: Maersk Line/APL Space Charter Agreement.

Parties: A.P. Moller-Maersk A/S (''Maersk''); APL Co. Pte Ltd.; and American President Lines, Ltd. (''APL'').

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes Maersk to charter space to APL on its service between the U.S. East Coast and Brazil, Uruguay, and Jamaica.

Agreement Nos.: 201111–001 and –002.

Title: Daily Passenger Cruise Wharfage Agreement.

Parties: Broward County and SeaEscape Entertainment, Inc.

Filing Party: Ms. Candace McCann, Office of the County Attorney; Broward County; 1850 Eller Drive; Suite 502; Fort Lauderdale, FL 33316.

Synopsis: The first amendment provides for additional daily vessel service and the second amendment revises the payment of certain wharfage charges under the agreement.

By Order of the Federal Maritime Commission.

Dated: March 17, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–4147 Filed 3–21–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 6, 2006.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. John Chung–Yuan Sun, Judy Chen–Mei Sun, Palos Verdes, California, and Jaclyn Chen-Hoa Sun, New York, New York; to retain voting shares of American Premier Bancorp, Arcadia, California, and thereby indirectly retain voting shares of American Premier Bank, Arcadia, California.

Board of Governors of the Federal Reserve System, March 17, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–4134 Filed 3–21–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://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 April 17, 2006.

A. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Kentucky Bancshares, Inc., Paris, Kentucky; to acquire 100 percent of the voting shares of Peoples Bancorp of Sandy Hook, Kentucky, and thereby indirectly acquire voting shares of Peoples Bank, Morehead, Kentucky.

2. Bancshares Subsidiary, Inc., Paris, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank, Morehead, Kentucky.

Board of Governors of the Federal Reserve System, March 17, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–4132 Filed 3–21–06; 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 Web site at *http://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 April 6, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capitol Bancorp Ltd., Lansing, Michigan; to engage *de novo* through its subsidiary, Capitol Wealth, Inc., Lansing, Michigan, in financial and investment advisory activities, and securities brokerage services, pursuant to sections 225.28(b)(6)(i) and (b)(7)(i).

Board of Governors of the Federal Reserve System, March 17, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–4133 Filed 3–21–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–05AK]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Intimate Partner and Sexual Violence Survey (NISVS)—New—The National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Intimate partner violence (IPV) and sexual violence (SV) are major public health problems that have serious health consequences and substantial costs for individuals, families, communities and society. Although it is well understood that IPV and SV are significant public health problems, their magnitude is not well understood and prevalence estimates vary considerably, due to under-reporting and non-standard or non-optimal survey methodology.

The NISVS pilot survey will be administered to a random sample of 3000 men and 3000 women ages 18–50. The proposed study is a critical step in the development of a national surveillance system for IPV and SV. The specific aims of this project are to: (1) Provide information that will assist in the selection of specific language to introduce IPV and SV victimization and perpetration in an ongoing national IPV and SV survey, and (2) determine the optimal order for asking questions about IPV (including stalking, physical violence, and emotional abuse) and SV. Three contexts (health, crime, and family conflict) and two question orders (victimization before perpetration and vice versa) will be evaluated to determine the context and order that best facilitates the reporting of victimization and perpetration.

Ultimately, this knowledge will assist the CDC in establishing an ongoing data collection system for monitoring IPV and SV victimization and perpetration.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 1,552.

ESTIMATED ANNUAL BURDEN TABLE

Type of respondent	Number of responses	Number of responses per respondent	Average burden per response (in hours)
Ineligible Household (Screened Only)	9,039	1	1/60
Eligible, Non-Participating Household (Screened, Does Not Consent)	3,026	1	3/60
Eligible Household (Completes Screening, Informed Consent, and Survey)	3,000	1	25/60

Dated: March 14, 2006.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–4118 Filed 3–21–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–06AY]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of the Spanish-Language Campaign *Good Morning Arthritis, Today You Will Not Defeat Us.*—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Arthritis affects nearly 43 million Americans, or about one in every six people, and is the leading cause of disability among adults in the United States. Because of the broad public health impact of this disease, the Centers for Disease Control and Prevention (CDC) developed the National Arthritis Action Plan in 1998 as a comprehensive approach to reducing the burden of arthritis in the United States.

As part of its efforts to implement the National Arthritis Action Plan, CDC developed and tested a health communications campaign promoting physical activity among Caucasian and African-American adults with arthritis. In 2003–2004, CDC developed a similar campaign for Spanish-speaking people with arthritis. Hispanic populations have a slightly lower prevalence rate of self-reported, doctor-diagnosed arthritis, but Hispanics with arthritis report greater work limitations, and higher rates of severe pain than do Caucasian populations with arthritis.

The Spanish-language campaign, *Good Morning Arthritis, Today You Will Not Defeat Us*, is designed to reach Spanish speaking adults with arthritis who are aged 45–64, who have high school education or less, and whose annual income is less than $35,000. The key message elements of the Spanish language health communications campaign are similar to its English counterpart, as are the campaign objectives and materials. The campaign objectives are to increase target audience members' (1) Beliefs about physical activity as an arthritis management strategy (there are ''things they can do'' to make arthritis better, and physical activity is an important part of arthritis management); (2) Knowledge of the benefits of physical activity and appropriate physical activity for people with arthritis; (3) Confidence in their ability to be physically active, and (4) Trial of physical activity behaviors. Based on formative research, campaign materials refer to exercise instead of physical activity. Campaign materials include; print ads, 30- and 60-second radio ads and public service announcements, and desktop displays with brochures for pharmacies, doctors' offices, and community centers.

In the Fall of 2005, the Spanish language campaign was pilot tested by 5 state health departments that receive funding from CDC for their arthritis programs. CDC will eventually disseminate these materials to all 36 CDC-funded states. The 5 preliminary pilot tests focused on reach and exposure; a more thorough evaluation is necessary to assess impact of the campaign. This information will be used to guide the public health practice of the 36 state arthritis programs and their partners.

CDC will conduct an evaluation of the impact of the Spanish language health communications campaign on the exercise/physical activity-related attitudes, beliefs, and behaviors among the target audience of Spanish-speaking people with arthritis. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Screening Survey	12,000	1	2/60	400
Telephone Survey	2,500	1	15/60	625
Total				1,025

Dated: March 16, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–4119 Filed 3–21–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Amendment of February 4, 2004, Order To Embargo Birds and Bird Products Imported From Albania, Azerbaijan, Cameroon, and Myanmar

SUMMARY: On February 4, 2004, the Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services issued an order to ban immediately the import of all birds (Class: *Aves*) from specified Southeast Asian countries, subject to limited exemptions for returning pet birds of U.S. origin and certain processed bird-derived products. HHS/CDC took this step because birds from these countries potentially can infect humans with avian influenza (influenza A/ [H5N1]). The February 4, 2004, order complemented a similar action taken at the same time by the Animal and Plant Health Inspection Services (APHIS) within the U.S. Department of Agriculture (USDA).

On March 10, 2004, HHS/CDC lifted the embargo of birds and bird products from the Hong Kong Special Administrative Region (HKSAR) because of the documented public-health and animal health measures taken by Hong Kong officials to prevent spread of the outbreak with the HKSAR, and the absence of highly pathogenic avian influenza H5N1 cases in Hong Kong's domestic and wild bird populations. USDA/APHIS took a similar action. On September 28, 2004, HHS/CDC extended the embargo on birds and bird products to include Malaysia because of the documented cases of highly pathogenic avian influenza A H5N1 in poultry in Malaysia. On July 20, 2005, USDA/APHIS adopted as a final rule the interim rule that became effective on February 4, 2004, which amended its regulations to prohibit or restrict the importation of birds, poultry, and unprocessed birds and poultry products

from regions that have reported the presence of highly pathogenic avian influenza H5N1 in poultry. (See 70 **Federal Register** 41608 [July 20, 2005].) As the United Nations Food and Agriculture Organization and the World Organization for Animal Health (OIE) have confirmed additional cases of highly pathogenic avian influenza (H5N1), USDA/APHIS has added additional countries to its ban. On December 29, 2005, HHS/CDC added the Republic of Kazakhstan, Romania, the Russian Federation, the Republic of Turkey, and Ukraine to its current embargo because of documented cases of highly pathogenic avian influenza H5N1 in poultry in those countries. On February 8, 2006, HHS/CDC added Nigeria to its embargo because of the documentation of highly pathogenic avian influenza H5N1 in poultry. On February 22, 2006, HHS/CDC added India to its embargo because of documentation of highly pathogenic avian influenza H5N1 in poultry. On February 27, 2006, added Egypt to its embargo because of documentation of highly pathogenic avian influenza H5N1 in poultry. On March 2, 2006, CDC issued an amendment adding Niger to its embargo after H5N1 was confirmed in poultry.

On February 24, 2006, OIE reported confirmation of highly pathogenic avian influenza H5N1 in poultry in Azerbaijan. On March 7, 2006, OIE reported confirmation of highly pathogenic avian influenza H5N1 in poultry in Albania. On March 11, 2006, OIE reported confirmation of highly pathogenic avian influenza H5N1 in poultry in Cameroon. On March 12, 2006, OIE reported confirmation of highly pathogenic avian influenza H5N1 in poultry in Myanmar. USDA/APHIS subsequently added Albania, Azerbaijan, Cameroon, and Myanmar to their ban. At this time, HHS/CDC is adding Albania, Azerbaijan, Cameroon, and Myanmar to its current embargo. This action is effective on March 15, 2006, and will remain in effect until further notice.

SUPPLEMENTARY INFORMATION:

Background

On February 24, OIE reported laboratory confirmation of highly pathogenic avian influenza in poultry in Azerbaijan.

On March 10, OIE reported laboratory confirmation of highly pathogenic avian influenza H5N1 in poultry in Albania in the village of Cuke, Sarande County (Viore State). The outbreak began on February 16, 2006.

An outbreak of avian influenza due to highly pathogenic virus H5N1 was repoted in duck farms in Doualare area in Maroua, Cameroon. The outbreak began on February 21, 2006, and confirmation of infection was reported by OIE on March 12, 2006.

An outbreak of highly pathogenic avian influenza subtype H5N1 was reported in poultry at Aung Myae Thar Zan Township, in Mandalay Division, Myanmar. The outbreak began on March 8, 2006, and confirmation of infection was reported by OIE on March 12, 2006.

Introduction of birds infected with highly pathogenic avian influenza H5N1 into the United States could lead to outbreaks among birds and among the human population, a significant public health threat. Banning the importation of all avian species from affected countries is an effective menas of limiting this threat. HHS/CDC is therefore taking this action to reduce the chance of introduction or spread of influenza A H5N1 into the United States.

Immediate Action

Therefore, pursuant to 41 CFR 71.32(b), HHS/CDC is amending the February 4, 2004, order to add Albania, Azerbaijan, Cameroon, and Myanmar to the list of countries subject to the order's embargo of birds and productes derived from birds. All other portions of the February 4, 2004, order, as further amended on March 10, 2004, September 28, 2004, December 29, 2005, February 8, 2006, February 22, 2006, February 27, 2006, and March 2, 2006 shall remain in effect until further notice.

Dated: March 16, 2006.

Julie Louise Gerberding,

Director, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 06–2767 Filed 3–21–06; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

The Ninth Annual Food and Drug Administration–Orange County Regulatory Affairs Educational Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing the following conference: Ninth Annual Educational Conference cosponsored with the Orange County Regulatory Affairs Discussion Group (OCRA). The conference is intended to provide the drug, device, and biologics industries with an opportunity to interact with FDA reviewers and compliance officers from the centers and district offices, as well as other industry experts. The main focus of this interactive conference will be product approval, compliance, and risk management in the three medical product areas. Industry speakers, interactive question and answer, and workshop sessions will also be included to assure open exchange and dialogue on the relevant regulatory issues.

Date and Time: The conference will be held on May 23 and 24, 2006, from 7:30 a.m. to 5 p.m.

Location: The conference will be held at the Fairmont Newport Beach Hotel, 4500 MacArthur Blvd., Newport Beach, CA 92660.

Contact: Linda Hartley, Food and Drug Administration, 19701 Fairchild, Irvine, CA 92612, 949–608–4413, FAX: 949–608–4417, or OCRA, Attention to Detail (ATD), 5319 University Dr., suite 641, Irvine, CA 92612, 949–387–9046, FAX: 949–387–9047, Web site: *www.ocra-dg.org*.

Registration and Meeting Information: See OCRA Web site at *www.ocra-dg.org*. Contact ATD at 949–387–9046.

Before April 24, 2006, registrations fees are as follows: $525.00 for members, $575.00 for nonmembers, and $350.00 for FDA/government/full-time students with the proper identification. After April 24, 2006: $575.00 for members, $625.00 for nonmembers, and $350.00 for FDA/government/full-time students with the proper identification.

The registration fee will cover actual expenses including refreshments, lunch, materials, parking, and speaker expenses.

If you need special accommodations due to a disability, please contact Linda Hartley (see *Contact*) at least 10 days in advance of the meeting.

Dated: March 10, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–4092 Filed 3–21–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0099]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses: Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses''. This guidance document describes a means by which Reagents for detection of specific novel influenza A viruses may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify Reagents for detection of specific novel influenza A viruses into class II (special controls). This guidance document is immediately in effect as a special control for Reagents for detection of specific novel influenza A viruses, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time.

ADDRESSES: Submit written requests for single copies on a 3.5'' diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Claudia Gaffey, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0496.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying Reagents for detection of specific novel influenza A viruses into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This notice announces the guidance document that will serve as a special control for Reagents for detection of specific novel influenza A viruses. An additional special control is established in 21 CFR 866.3332. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the agency's current thinking on Reagents for detection of specific novel influenza A viruses. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number 1596 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information, including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB control numbers 0910–0485, 0910–0120, 0910–0073 and 0910–0584 and expires on September 30, 2006.

V. Comments

Interested persons may submit to the Division of Dockets Management (See **ADDRESSES**), written or electronic comments regarding this document. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 10, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–2743 Filed 3–21–06; 8:45 am]

BILLING CODE 4160–01–Ss

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD01–06–016]

Implementation of Sector Southeastern New England

AGENCY: Coast Guard, DHS.

ACTION: Notice of organizational change.

SUMMARY: This notice explains the details associated with the establishment of Sector Southeastern New England. The date on which the boundaries of the areas of responsibility discussed herein shifted was February 28, 2006, the date of the official stand-up of Sector Southeastern New England. The Sector Commander has the authority, responsibility, and missions of Group Woods Hole, Captain of the Port (COTP) and Marine Safety Office Providence in the zone identified in this notice. The Coast Guard has established continuity of operations whereby all previous practices and procedures will remain in effect until superseded by an authorized Coast Guard official or document.

DATES: The effective date of the Sector stand-up was February 28, 2006.

ADDRESSES: Documents associated with this notice are part of docket CGD01–06–016 and are available for inspection or copying at Commander, First Coast Guard District (dm), 8th Floor, 408 Atlantic Ave., Boston, MA 02110, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: The First Coast Guard District Resource and Performance Management Office at (617) 223–8248, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Discussion of Notice

This notice confirms the stand-up of Sector Southeastern New England. This is the final Sector being established in the First Coast Guard District. Information concerning the stand-up of other Sectors within the First Coast Guard District was published via a similar Notice of Organizational Change in the **Federal Register** on June 27, 2005 (70 FR 36942).

The boundaries of the areas of responsibility for Sector Southeastern New England discussed herein changed on the date of stand-up, February 28, 2006. The restructuring described in this notice is internal to the Coast Guard. The purpose of this organizational change is to strengthen unity of command in our port, waterway and coastal areas of operation.

Sector Southeastern New England will contain a single integrated command center, which provides a common operating picture. The Sector is composed of three departments, namely: The Response Department, the Prevention Department, and the Logistics Department.

The Search and Rescue (SAR) boundary formally associated with Group Woods Hole has been changed to align with the Marine Inspection and COTP zone formerly associated with Marine Safety Office Providence, as described in this notice. The new Sector's area of responsibility for SAR will be maintained in accordance with the District SAR Plan.

The Sector Commander is vested with all the rights, responsibilities, duties, and authority of a Group Commander and a Commanding Officer, Marine Safety Office, as provided for in Coast Guard regulations, and is the successor in command to the Commanding Officer of Marine Safety Office Providence and the Commander of Group Woods Hole. The Sector Southeastern New England Commander is designated: (a) Captain of the Port (COTP); (b) Federal Maritime Security Coordinator (FMSC); (c) Federal On-Scene Coordinator (FOSC) consistent with the National Contingency Plan; (d) Officer In Charge, Marine Inspection (OCMI); and (e) Search and Rescue Mission Coordinator (SMC).

The First District Commander may also designate the Sector Commander as mission coordinator for search and rescue and law enforcement operations beyond the exclusive economic zone. The Deputy Sector Commander has been designated alternate COTP, FMSC, FOSC, SMC, and acting OCMI. A separate continuity of operations order has been issued providing that all previous Marine Safety Office and Group practices and procedures will remain in effect until superseded by the Sector Commander. The continuity of operations order addresses existing COTP regulations, orders, directives and policies.

Sector Southeastern New England (Sector SENE) is located at Little Harbor Rd., Woods Hole, Massachusetts. Sector SENE is responsible for all Coast Guard missions in the following Marine Inspection and Captain of the Port Zone. The zone starts on the Massachusetts coast at Manomet Point at 41°55′ N latitude, 70°33′ W longitude and proceeds northeast to 42°08′ N latitude 70°15′ W longitude; thence east along 42°08′ N latitude to the outermost extent of the EEZ; thence southerly along the outermost extent of the EEZ to a line bearing 132° T from Watch Hill Light, Rhode Island; thence northwest along a line bearing 132° T from Watch Hill Light, Rhode Island, to Watch Hill Light; thence northeast to 41°21′ N latitude, 71°48.5′ W longitude at Westerly, Rhode Island; thence north to 41°25′ N latitude, 71°48′ W longitude; thence north along the Connecticut-Rhode Island boundary, including the waters of Beach Pond, to the Massachusetts boundary; thence east along the Massachusetts-Rhode Island boundary to 42°01.5′ N latitude, 71°28.0′ W longitude; thence east to 42°04′ N latitude, 71°06′ W longitude; thence southeasterly to the point of origin.

All existing missions and functions performed by MSO Providence, and Group Woods Hole have been realigned under this new organizational structure as of February 28, 2006, and MSO Providence, and Group Woods Hole no longer exist as separate organizational entities.

The following is updated address and point of contact information to facilitate requests from the public:

Name: Sector Southeastern New England.

Address: Commander, U.S. Coast Guard Sector Southeastern New England, 1 Little Harbor Road, Woods Hole, MA 02543–1099.

Contact: General Number, (508) 457–3272.

Dated: March 12, 2006.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. E6–4096 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities; Declaration of Persons Who Performed Repairs or Alterations

AGENCY: Bureau of Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: CBP has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Declaration of Persons Who Performed Repairs or Alterations. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extension without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 58458) on October 6, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 21, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION:

CBP encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other

(5) forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Declaration of Person Who Performed Repairs.

OMB Number: 1651–0048.

Form Number: None.

Abstract: The Declaration of Person Who Performed Repairs is used by Customs to ensure duty-free status for entries covering articles repaired aboard. It must be filed by importers claiming duty-free status.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 20,472.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 10,236.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: March 15, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6–4116 Filed 3–21–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Bonded Warehouse Proprietor's Submission

AGENCY: Bureau of Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: CBP has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Bonded Warehouse Proprietor's Submission. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 58457) on October 6, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 21, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Bonded Warehouse Proprietor's Submission.

OMB Number: 1651–0033.

Form Number: Form 300.

Abstract: CBP Form 300 is prepared by Bonded Warehouse Proprietor's and submitted to CBP annually. The document reflects all bonded

merchandise entered, released, and manipulated, and includes beginning and ending inventories.

Current Actions: This submission is being submitted to extend the expiration date with a change in the burden hours.

Type of Review: Extension (with change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 1,800.

Estimated Time Per Respondent: 24 hours and 18 minutes.

Estimated Total Annual Burden Hours: 43,740.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: March 15, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6–4117 Filed 3–21–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–08]

Notice of Proposed Information Collection: Comment Request; Home Mortgage Disclosure Act (HMDA) Loan/ Application Register

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 22, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Lillian_Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Judith V. May, Director, Office of Evaluation, Office of Finance and Budget, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–7500 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Home Mortgage Disclosure Act (HMDA) Loan/ Application Register.

OMB Control Number, if applicable: 2502–0539.

Description of the need for the information and proposed use: The HMDA Loan/Application Register collects information from mortgage lenders on application for, and originations and purchases of, mortgage and home improvement loans. Nondepository mortgage lending institutions are required to use the information generated as a running log throughout the calendar year, and send the information to HUD by March 1 of the following calendar year.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 168,000; the number of respondents is 1,400 generating approximately 1,400 annual responses; the frequency of response is on occasion and annually; and the estimated time needed to prepare the response varies from 10 hours to 15,000 hours with an average of 120 hours.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 15, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E6–4094 Filed 3–21–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–07]

Notice of Proposed Information Collection: Comment Request; Changes in Approved Drawings and Specifications

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 22, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Lillian_Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Changes in Approved Drawings and Specifications.

OMB Control Number, if applicable: 2502–0117.

Description of the need for the information and proposed use: Builders who request changes to HUD's accepted drawings and specifications for proposed construction properties as required by homebuyers, or determined by the builder use the information collection. The lender reviews the changes and amends the approved exhibits. These changes may affect the value shown on the HUD commitment. HUD requires the builder to use form HUD–92577 to request changes for proposed construction properties. HUD's collection of this information is for the purpose of ascertaining that HUD does not insure a mortgage on property that poses a risk to health or safety of the occupant.

Agency form numbers, if applicable: HUD–92577.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 5,000; the number of respondents is 10,000 generating approximately 10,000 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 30 minutes.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 15, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E6–4095 Filed 3–21–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Reviews of 56 Species in California and Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the initiation of a 5-year review of 56 species under section 4(c)(2)(B) of the Endangered Species Act (Act). The purpose of a 5-year review is to ensure that the classification of a species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants is accurate and based on the best scientific and commercial data available at the time of the review. We are requesting submission of any such information that has become available since the original listing of each of these 56 species. Based on the results of these 5-year reviews, we will make the requisite findings under section 4(c)(2)(A) of the Act.

DATES: We must receive your information no later than May 22, 2006. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for instructions on how to submit information and review the information that we receive on these species.

FOR FURTHER INFORMATION CONTACT: For species-specific information, contact the appropriate individual in Table 3 under ''Public Solicitation of New Information.''

SUPPLEMENTARY INFORMATION:

Background

Why Is a 5-Year Review Conducted?

Under the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*), we maintain a List of Endangered and Threatened Wildlife and Plants at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the 56 species listed in Table 1.

TABLE 1.—SUMMARY OF LISTING INFORMATION FOR 56 SPECIES IN CALIFORNIA AND NEVADA

Common name	Scientific name	Status	Where listed	Final listing rule
ANIMALS				
Ash Meadows Amargosa pupfish ..	*Cyprinodon nevadensis mionectes.*	Endangered	U.S.A. (NV)	48 FR 40178 (02–SEP–83)
Behren's silverspot butterfly	*Speyeria zerene behrensii*	Endangered	U.S.A. (CA)	62 FR 64306 (05–DEC–97)
Blunt-nosed leopard lizard	*Gambelia silus*	Endangered	U.S.A. (CA)	32 FR 4001 (11–MAR–67)
California freshwater shrimp	*Syncaris pacifica*	Endangered	U.S.A. (CA)	53 FR 43884 (31–OCT–88)
Conservancy fairy shrimp	*Branchinecta conservatio*	Endangered	U.S.A. (CA)	59 FR 48136 (19–SEP–94)
Delta green ground beetle	*Elaphrus viridis*	Threatened	U.S.A. (CA)	45 FR 52807 (08–AUG–80)
Desert dace	*Eremichthys acros*	Threatened	U.S.A. (NV)	50 FR 50304 (10–DEC–85)
Fresno kangaroo rat	*Dipodomys nitratoides exilis*	Endangered	U.S.A. (CA)	50 FR 4222 (30–JAN–85)
Giant kangaroo rat	*Dipodomys ingens*	Endangered	U.S.A. (CA)	52 FR 283 (05–JAN–87)

TABLE 1.—SUMMARY OF LISTING INFORMATION FOR 56 SPECIES IN CALIFORNIA AND NEVADA—Continued

Common name	Scientific name	Status	Where listed	Final listing rule
Inyo California towhee	*Pipilo crissalis eremophilus*	Threatened	U.S.A. (CA)	52 FR 28780 (03–AUG–87)
Kern primrose sphinx moth	*Euproserpinus euterpe*	Threatened	U.S.A. (CA)	45 FR 24088 (08–APR–80)
Laguna Mountains skipper	*Pyrgus ruralis lagunae*	Endangered	U.S.A. (CA)	62 FR 2313 (16–JAN–97)
Longhorn fairy shrimp	*Branchinecta longiantenna*	Endangered	U.S.A. (CA)	59 FR 48136 (19–SEP–94)
Modoc sucker	*Catostomus microps*	Endangered	U.S.A. (CA)	50 FR 24526 (11–JUN–85)
Pahrump poolfish	*Empetrichthys latos*	Endangered	U.S.A. (NV)	32 FR 4001 (11–MAR–67)
Paiute cutthroat trout	*Oncorhynchus clarki seleniris*	Threatened	U.S.A. (CA)	32 FR 4001 (11–MAR–67)
Riverside fairy shrimp	*Streptocephalus woottoni*	Endangered	U.S.A. (CA)	58 FR 41384 (03–AUG–93)
San Diego fairy shrimp	*Branchinecta sandiegonensis*	Endangered	U.S.A. (CA)	62 FR 4925 (03–FEB–97)
San Joaquin kit fox	*Vulpes macrotis mutica*	Endangered	U.S.A. (CA)	32 FR 4001 (11–MAR–67)
Tidewater goby	*Eucyclogobius newberryi*	Endangered	U.S.A. (CA)	59 FR 5494 (04–FEB–94)
Vernal pool fairy shrimp	*Branchinecta lynchi*	Threatened	U.S.A. (CA, OR)	59 FR 48136 (19–SEP–94)
Vernal pool tadpole shrimp	*Lepidurus packardi*	Endangered	U.S.A. (CA)	59 FR 48136 (19–SEP–94)
White River spinedace	*Lepidomeda albivallis*	Endangered	U.S.A. (NV)	50 FR 37194 (12–SEP–85)
PLANTS				
Bakersfield cactus	*Opuntia treleasei*	Endangered	U.S.A. (CA)	55 FR 29361 (19–JUL–90)
Ben Lomond spineflower	*Chorizanthe pungens* var. *hartwegiana*.	Endangered	U.S.A. (CA)	59 FR 5499 (04–FEB–94)
Butte County meadowfoam	*Limnanthes floccosa* ssp. *californica*.	Endangered	U.S.A. (CA)	57 FR 24192 (08–JUN–92)
California jewelflower	*Caulanthus californicus*	Endangered	U.S.A. (CA)	55 FR 29361 (19–JUL–90)
Catalina Island mountain-mahogany.	*Cercocarpus traskiae*	Endangered	U.S.A. (CA)	62 FR 42692 (08–AUG–97)
Chorro Creek bog thistle	*Cirsium fontinale* var. *obispoense*	Endangered	U.S.A. (CA)	59 FR 64613 (15–DEC–94)
Coachella Valley milk-vetch	*Astragalus lentiginosus* var. *coachellae*.	Endangered	U.S.A. (CA)	63 FR 53596 (06–OCT–98)
Colusa grass	*Neostapfia colusana*	Threatened	U.S.A. (CA)	62 FR 14338 (26–MAR–97)
Hairy Orcutt grass	*Orcuttia pilosa*	Endangered	U.S.A. (CA)	62 FR 14338 (26–MAR–97)
Hoffmann's rock-cress	*Arabis hoffmannii*	Endangered	U.S.A. (CA)	62 FR 40954 (31–JUL–97)
Howell's spineflower	*Chorianthe howellii*	Endangered	U.S.A. (CA)	57 FR 27848 (22–JUN–92)
Indian Knob mountain balm	*Eriodictyon altissimum*	Endangered	U.S.A. (CA)	59 FR 64613 (15–DEC–94)
Kern mallow	*Eremalche kernensis*	Endangered	U.S.A. (CA)	55 FR 29361 (19–JUL–90)
Lane Mountain milk-vetch	*Astragalus jaegerianus*	Endangered	U.S.A. (CA)	63 FR 53596 (06–OCT–98)
Menzies' wallflower	*Erysimum menziesii*	Endangered	U.S.A. (CA)	57 FR 27848 (22–JUN–92)
Monterey gilia	*Gilia tenuiflora* ssp. *arenaria*	Endangered	U.S.A. (CA)	57 FR 27848 (22–JUN–92)
Morro manzanita	*Arctostaphylos morroensis*	Threatened	U.S.A. (CA)	59 FR 64613 (15–DEC–94)
Munz's onion	*Allium munzii*	Endangered	U.S.A. (CA)	63 FR 54975 (13–OCT–98)
Otay tarplant	*Deinandra (=Hemizonia) conjugens*.	Threatened	U.S.A. (CA); Mexico (B.C.).	63 FR 54937 (13–OCT–98)
Orcutt's spineflower	*Chorizanthe orcuttiana*	Endangered	U.S.A. (CA)	61 FR 52370 (07–OCT–96)
Pismo clarkia	*Clarkia speciosa* ssp. *immaculata*	Endangered	U.S.A. (CA)	59 FR 64613 (15–DEC–94)
Sacramento Orcutt grass	*Orcuttia viscida*	Endangered	U.S.A. (CA)	62 FR 14338 (26–MAR–97)
San Jacinto Valley crownscale	*Atriplex coronata* var. *notatior*	Endangered	U.S.A. (CA)	63 FR 54975 (13–OCT–98)
Santa Cruz Island bush-mallow	*Malacothamnus fasciculatus* var. *nesioticus*.	Endangered	U.S.A. (CA)	62 FR 40954 (31–JUL–97)
Santa Rosa Island manzanita	*Arctostaphylos confertiflora*	Endangered	U.S.A. (CA)	62 FR 40954 (31–JUL–97)
Showy Indian clover	*Trifolium amoenum*	Endangered	U.S.A. (CA)	62 FR 54791 (22–OCT–97)
Slender-horned spineflower	*Dodecahema leptoceras*	Endangered	U.S.A. (CA)	52 FR 36265 (28–SEP–87)
Slender Orcutt grass	*Orcuttia tenuis*	Threatened	U.S.A. (CA)	62 FR 14338 (26–MAR–97)
Soft-leaved paintbrush	*Castilleja mollis*	Endangered	U.S.A. (CA)	62 FR 40954 (31–JUL–97)
Spreading navarretia	*Navarretia fossalis*	Threatened	U.S.A. (CA); Mexico (B.C.).	63 FR 54975 (13–OCT–98)
Steamboat buckwheat	*Eriogonum ovalifolium* var. *williamsiae*.	Endangered	U.S.A. (NV)	51 FR 24669 (08–JUL–86)
Thread-leaved brodiaea	*Brodiaea filifolia*	Threatened	U.S.A. (CA)	63 FR 54975 (13–OCT–98)
Willowy monardella	*Monardella linoides* ssp. *viminea*	Endangered	U.S.A. (CA); Mexico.	63 FR 54937 (13–OCT–98)

What Information Is Considered in the Review?

A 5-year review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that has become available since the current listing determination or most recent status review, such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends (see five factors under heading ''How Do We Determine Whether a Species is Endangered or Threatened?''); and

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes,

identification of erroneous information contained in the List, and improved analytical methods.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Our assessment of these factors is required, under section 4(b)(1) of the Act, to be based solely on the best scientific and commercial data available.

What Could Happen as a Result of This Review?

If we find information concerning the 56 species listed in Table 1 indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from threatened to endangered; (b) reclassify the species from endangered to threatened; or (c) remove the species from the List. If we find that a change in classification is not warranted, the species will remain on the List under its current status.

Public Solicitation of New Information

To ensure that these 5-year reviews are complete and based on the best available scientific and commercial information, we solicit new information from the public, concerned governmental agencies, Tribes, the scientific community, environmental entities, industry, and any other interested parties concerning the status of the species.

If you wish to provide information for any species included in these 5-year reviews, submit your comments and materials to the Field Supervisors at the appropriate Fish and Wildlife Office as presented in Table 2. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. We will not consider anonymous comments, however. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

TABLE 2.—ADDRESSES FOR SUBMITTING COMMENTS ON THE 5-YEAR REVIEWS OF 56 SPECIES IN CALIFORNIA AND NEVADA

Species	Addresses for comments
Laguna Mountains skipper	Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92009. Information may also be submitted electronically at *FW85yr06@fws.gov*.
Riverside fairy shrimp San Diego fairy shrimp Catalina Island mountain mahogany Coachella Valley milk-vetch Munz's onion Orcutt's spineflower Otay tarplant San Jacinto Valley crownscale Slender-horned spineflower Spreading navarretia Thread-leaved brodiaea Willowy monardella	
Inyo California towhee	Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003. Information may also be submitted electronically at *fw1vfwo5year@fws.gov*.
Tidewater goby Ben Lomond spineflower Chorro Creek bog thistle Hoffmann's rock-cress Indian Knob mountain balm Lane Mountain milk-vetch Menzies' wallflower Monterey gilia Morro manzanita Pismo clarkia Santa Cruz Island bush-mallow Santa Rosa Island manzanita Soft-leaved paintbrush	

TABLE 2.—ADDRESSES FOR SUBMITTING COMMENTS ON THE 5-YEAR REVIEWS OF 56 SPECIES IN CALIFORNIA AND NEVADA—Continued

Species	Addresses for comments
Blunt-nosed leopard lizard	Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825. Information may also be submitted electronically at *fw1sfo5year@fws.gov.*
California freshwater shrimp Conservancy fairy shrimp Delta green ground beetle Fresno kangaroo rat Giant kangaroo rat Kern primrose sphinx moth Longhorn fairy shrimp San Joaquin kit fox Vernal pool fairy shrimp Vernal pool tadpole shrimp Bakersfield cactus Butte County meadowfoam California jewelflower Colusa grass Hairy Orcutt grass Kern mallow Sacramento Orcutt grass Showy Indian clover Slender Orcutt grass	
Ash Meadows Amargosa pupfish	Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Blvd., Suite 234, Reno, NV 89502. Information may also be submitted electronically at *fw1nfwo_5yr@fws.gov.*
Desert dace Pahrump poolfish Paiute cutthroat trout White River spinedace Steamboat buckwheat	
Behren's silverspot butterfly	Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 11655 Heindon Road, Arcata, CA 95521. Information may also be submitted electronically at *howellsspineflower@fws.gov* for Howell's spineflower and *behrenssilverspot@fws.gov* for Behren's silverspot butterfly.
Howell's spineflower	
Modoc sucker	Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Klamath Falls Fish and Wildlife Office, 6610 Washburn Way, Klamath Falls, OR 97603. Information may also be submitted electronically at *kfalls@fws.gov.*

For further information on any of the 56 species, contact the person identified for that species in Table 3.

TABLE 3.—INFORMATION CONTACTS FOR 56 SPECIES UNDERGOING 5-YEAR REVIEW IN CALIFORNIA AND NEVADA

Species	Information contact
Laguna Mountains skipper Riverside fairy shrimp San Diego fairy shrimp Catalina Island mountain mahogany Coachella Valley milk-vetch Munz's onion Orcutt's spineflower Otay tarplant San Jacinto Valley crownscale Slender-horned spineflower Spreading navarretia Thread-leaved brodiaea Willowy monardella	Jim Bartel at the Carlsbad Fish and Wildlife Office at (760) 431–9440.

TABLE 3.—INFORMATION CONTACTS FOR 56 SPECIES UNDERGOING 5-YEAR REVIEW IN CALIFORNIA AND NEVADA—Continued

Species	Information contact
Inyo California towhee	Mike McCrary at the Ventura Fish and Wildlife Office at (805) 644–1766.
Tidewater goby	
Ben Lomond spineflower	Connie Rutherford at the Ventura Fish and Wildlife Office at (805) 644–1766.
Chorro Creek bog thistle	
Hoffmann's rock-cress	
Indian Knob mountain balm	
Lane Mountain milk-vetch	
Menzies' wallflower	
Monterey gilia	
Morro manzanita	
Pismo clarkia	
Santa Cruz Island bush-mallow	
Santa Rosa Island manzanita	
Soft-leaved paintbrush	
Blunt-nosed leopard lizard	Craig Aubrey at the Sacramento Fish and Wildlife Office at (916) 414–6600.
California freshwater shrimp	
Conservancy fairy shrimp	
Delta green ground beetle	
Fresno kangaroo rat	
Giant kangaroo rat	
Kern primrose sphinx moth	
Longhorn fairy shrimp	
San Joaquin kit fox	
Vernal pool fairy shrimp	
Vernal pool tadpole shrimp	
Bakersfield cactus	
Butte County meadowfoam	
California jewelflower	
Colusa grass	
Hairy Orcutt grass	
Kern mallow	
Sacramento Orcutt grass	
Showy Indian clover	
Slender Orcutt grass	
Ash Meadows Amargosa pupfish	Jody Brown at the Nevada Fish and Wildlife Office at (775) 861–6300.
Desert dace	
Pahrump poolfish	
Paiute cutthroat trout	
White River spinedace	
Steamboat buckwheat	
Howell's spineflower	Dave Imper at the Arcata Fish and Wildlife Office at (707) 822–7201.
Behren's silverspot butterfly	Jim Watkins at the Arcata Fish and Wildlife Office at (707) 822–7201.
Modoc sucker	Ron Larson at the Klamath Falls Fish and Wildlife Office at (541) 885–8481.

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 9, 2006.

Paul Henson,

Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. E6–4120 Filed 3–21–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(WY–060–5410–EQ), WYW3397 & WYW83394]

Notice of Availability of Draft Environmental Assessment and Notice of Public Hearing for an Alluvial Valley Floor Coal Lease Exchange in Campbell County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability, Notice of public hearing.

SUMMARY: The Bureau of Land Management (BLM) received an application from Powder River Coal Company, Inc., (PRCC) to exchange portions of two Federal coal leases affecting an alluvial valley floor (AVF) designated as significant to farming. The affected leases are located at the Caballo Mine in Campbell County, Wyoming. The AVF lands will be exchanged for new coal leases adjacent to one or more existing coal leases.

This tract, which was applied for as an AVF exchange under the provisions of 43 CFR 3436, is called the Gold Mine Draw Exchange (GMDX) Tract. Consistent with the National Environmental Policy Act (NEPA) regulations, BLM must prepare an environmental analysis prior to

consummating an exchange. BLM is announcing that the Draft Environmental Analysis (EA) is available for public review and that a public hearing will be held to elicit comments from any affected parties concerning the EA or the exchange in general.

DATES: The draft EA will be available for review and comment for 30 calendar days from the date this notice is published in the **Federal Register.** On April 11, 2006, the BLM will host a public hearing at 7 p.m. at the Clarion Hotel and Convention Center, 2009 South Douglas Highway, Gillette, Wyoming. At the public hearing, the public is invited to submit comments and resource information, and identify issues or concerns to be considered in the exchange process.

Announcements will be made through local news media and the Casper Field Office's Web site, which is: *http://www.wy.blm.gov/cfo.*

ADDRESSES: Please submit written comments or concerns to the BLM Casper Field Office, Attn: Steven Wright, 2987 Prospector Drive, Casper, Wyoming 82604. Written comments or resource information may also be hand-delivered to the BLM Casper Field Office or sent by facsimile to the attention of Steven Wright at 307–261–7587. Comments may be sent electronically to *casper_wymail@blm.gov;* please put GMDX Tract/Steven Wright in the subject line.

Members of the public may examine documents pertinent to this proposal by visiting the Casper Field Office during its business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Your response is important and will be considered in the EA process. If you do respond, we will keep you informed of the availability of environmental documents that address impacts that might occur from this proposal. Please note that comments and information submitted regarding this project including names, electronic mail addresses, and street addresses of the respondents will be available for public review and disclosure at the Casper Field Office. Individuals may request confidentiality. If you wish to withhold your name, electronic mail address, or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, or from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Steven Wright or Mike Karbs, BLM Casper Field Office, 2987 Prospector Drive, Casper, Wyoming 82604. Mr. Wright or Mr. Karbs may also be reached by telephone at 307–261–7600.

SUPPLEMENTARY INFORMATION: An application to exchange Federal coal leases adjacent to the Caballo Mine was filed on July, 24, 2003, by PRCC. The Powder River Regional Coal Team reviewed this lease exchange proposal at a public meeting held on April 27, 2005, in Gillette, Wyoming, and concurred with the further processing of the application.

As currently filed, the application includes approximately 67 million tons of in-place Federal coal underlying the following lands in Campbell County, Wyoming:

T. 48 N., R. 70 W., 6th P.M., Wyoming
Sec. 18: Lots 15–18;
T. 48 N., R. 71 W., 6th P.M., Wyoming
Sec. 11: Lot 16 (SE¼);
Sec. 12: Lots 13, 14, 15 (W½, SE¼);
Sec. 13: Lots 1 (SW½), 2–8, 11–14;
Sec. 14: Lots 1, 8 (E½); Sec. 24: Lots 1–3.
Containing 921.6 acres more or less.

The surface estate overlying the Federal coal is privately owned. If the GMDX Tract is exchanged for a new Federal coal lease, the new lease must be incorporated into the existing mining and reclamation plan for the adjacent mine and the Secretary of the Interior must approve the revised Mineral Leasing Act (MLA) mining plan before the Federal coal in the tract can be mined. The Office of Surface Mining is the Federal agency that would be responsible for recommending approval, approval with conditions, or disapproval of the revised MLA mining plan to the office of the Secretary of the Interior.

Robert A. Bennett,

State Director.

[FR Doc. 06–2618 Filed 3–21–06; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–543]

In the Matter of Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets; Notice of Commission Determination Not To Review an Initial Determination Granting-In-Part Various Motions To Intervene and Extending the Target Date for Completion of the Investigation

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 the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') (Order No. 27) granting-in-part various motions to intervene on the issues of remedy and bonding and extending the target date for completion of the above-captioned investigation from September 21, 2006, to December 21, 2006.

FOR FURTHER INFORMATION: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the ID and all other nonconfidential 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. 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*.

SUPPLEMENTARY INFORMATION: On June 21, 2005, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Broadcom Corporation of Irvine, California (''Broadcom''), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain

baseband processor chips and chipsets, transmitter and receiver (radio) chips, power control chips, and products containing same, including cellular telephone handsets by reason of infringement of certain claims of U.S. Patent Nos. 6,374,311 (''the '311 patent''), 6,714,983 (''the '983 patent''), 5,682,379 (''the '379 patent''), 6,359,872 (''the '872 patent''), and 6,583,675 (''the '675 patent''). The complainant named Qualcomm Incorporated (''Qualcomm'') of San Diego, California as the only respondent.

On December 23, 2005, Broadcom filed a motion for summary determination that Broadcom satisfied the economic prong of the domestic industry requirement under 19 U.S.C. 1337(a)(3)(C) with respect to the '311, '983, '379, '872, and '675 patents. The Commission investigative attorney (''IA'') supported the motion. Respondent Qualcomm took no position with regard to the motion. On January 24, 2006, the ALJ issued an ID (Order No. 19) granting the motion for summary determination. No petitions for review of the ID were filed. On February 16, 2006, the Commission determined not to review Order No. 19. On January 31, 2006, Cellco Partnership d/b/a Verizon Wireless (''Verizon'') filed a motion to intervene in the investigation. On February 2, 2006, LG Electronics Mobilecomm U.S.A., Inc. (''LG'') filed a motion to intervene. On February 3, 2006, Motorola, Inc. (''Motorola'') and Kyocera Wireless Corp. (''Kyocera'') each filed motions to intervene. On February 8, 2006, Sprint Nextel Corporation (''Sprint'') filed a motion to intervene. On February 10, 2006, Samsung Electronics Co., Ltd. (''Samsung'') filed a motion to intervene for the limited purpose of presenting evidence relating to remedy.

On February 21, 2006, the ALJ issued an ID (Order No. 27) granting the motions of Verizon, LG, Kyocera, Motorola, Sprint, and Samsung to intervene for the limited purpose of presenting evidence related to remedy and bonding. The ALJ also extended the target date for completion of the investigation from September 21, 2006, to December 21, 2006. No party filed a petition for review of Order No. 27.

The Commission has determined not to review Order No. 27.

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 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: March 16, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–4125 Filed 3–21–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–506]

In the Matter of Certain Optical Disk Controller Chips and Chipsets and Products Containing Same, Including DVD Players And PC Optical Storage Devices; Notice of Commission Determination To Rescind Remedial Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to rescind the remedial orders issued in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the Commission orders, the Commission opinion in support thereof, and all other nonconfidential 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–ON–LINE) 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: The Commission instituted this investigation on April 14, 2004, based on a complaint filed on behalf of Zoran Corporation (''Zoran'') and Oak Technology, Inc. (''Oak'') both of Sunnyvale, California (collectively ''complainants''). 69 *FR* 19876. The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain optical disk controller chips and chipsets and products containing same, including DVD players and PC optical storage devices, by reason of infringement of claims 1–12 of U.S. Patent No. 6,466,736 (''the '736 patent''), claims 1–3 of U.S. Patent No. 6,584,527 (''the '527 patent''), and claims 1–35 of U.S. Patent No. 6,546,440 (''the '440 patent''). *Id.*

The notice of investigation identified 12 respondents. 69 *FR* 19876. On June 7, 2004, the presiding administrative law judge (''ALJ'') issued an initial determination (''ID'') (Order No. 5) terminating the investigation as to two respondents on the basis of a consent order and settlement agreement. On June 22, 2004, the ALJ issued an ID (Order No. 7) granting complainants' motion to amend the complaint and notice of investigation to add nine additional respondents. Those IDs were not reviewed by the Commission.

On December 22, 2004, the ALJ issued an ID (Order No. 33) granting complainants' motion to terminate the investigation in part with respect to claims 2–6 and 8–11 of the '736 patent and claims 2–4, 6, 9, 11, 12, 15–18, 20, and 22–35 of the '440 patent. On January 28, 2005, the ALJ issued an ID (Order No. 37) granting complainants' motion to terminate the investigation in part with respect to claim 12 of the '736 patent. Neither ID was reviewed by the Commission. Thus, at the time that Order No. 37 issued, the claims remaining for determination on the merits were claims 1 and 7 of the '736 patent; claims 1, 5, 7, 8, 10, 13, 14, 19, and 21 of the '440 patent; and claims 1–3 of the '527 patent.

An eight-day evidentiary hearing was held on February 7–12, and 14–15, 2005.

On May 16, 2005, the ALJ issued his final ID, findings of fact and conclusions of law, and recommended determination on remedy and bonding. The ALJ concluded that there was a violation of section 337 based on his findings that: (a) The accused products infringe claim 3 of the '527 patent, (b) the '527 patent is not unenforceable, (c) claim 3 of the '527 patent is not invalid, and (d) complainants have satisfied the domestic industry requirement with respect to the '527 patent. Although the ALJ found that the other asserted claims of the '527 patent (claims 1 and 2) are not invalid, he found that the accused products do not infringe those claims. The ALJ found no violation with respect to the other patents in issue. He found that the accused products do not infringe any asserted claim of the '440 or '736 patents and that complainants

have not satisfied the domestic industry requirement with respect to those patents. He also found that the asserted claims of the '440 and '736 patents are not invalid and that those patents are not unenforceable.

On May 27, 2005, complainants and nineteen respondents each petitioned for review of portions of the final ID. On July 19, 2005, the Commission determined to review the ID in part. 70 *FR* 42589–91. Specifically, the Commission determined to review the ID's findings of fact and conclusions of law with respect to the '527 and '440 patents. *Id.* The Commission determined not to review the ID's findings of fact and conclusions of law with respect to the '736 patent, thereby adopting them. *Id.* Accordingly, the Commission found no violation of section 337 with respect to the '736 patent. *Id.* The Commission also determined to review and modify the ID to clarify that respondents accused of infringing only the asserted claims of the '736 patent (viz., respondents Audiovox Corporation; Initial Technology, Inc.; Mintek Digital, Inc.; Shinco International AV Co., Ltd.; Changzhou Shinco Digital Technology Co., Ltd.; Jiangsu Shinco Electronic Group Co., Ltd.; Terapin Technology Pte., Ltd. [formerly known as Teraoptix d/b/a Terapin Technology] of Singapore; and Terapin Technology U.S. [formerly also known as Teraoptix]) are not in violation of section 337. *Id.*

On review, the Commission determined that there was a violation of section 337 as to claim 3 of the '527 patent, but no violation of the statute as to the remaining claims in issue of the '527 patent (viz., claims 1 and 2) and no violation as to the claims in issue of the '440 patent (viz., claims 1, 5, 7, 8, 10, 13, 14, 19, and 21). 70 *FR* 57620. On September 28, 2005, the Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of chips or chipsets covered by claim 3 of the '527 patent manufactured abroad or imported by or on behalf of MediaTek, Inc. of Hsin-Chu City, Taiwan, and optical storage devices containing such covered chips or chipsets that are manufactured abroad or imported by or on behalf of Artronix Technology, Inc. of Brea, California; ASUSTek Computer, Inc. of Taipei, Taiwan; ASUS Computer International of Fremont, California; MSI Computer Corporation of City of Industry, California; TEAC America Inc. of Montebello, California; EPO Science and Technology, Inc. of Taipei, Taiwan; LITE-ON Information Technology Corp. of Taipei, Taiwan; Micro-Star International Co., Ltd. of Taipei Hsien, Taiwan; TEAC Corp. of Tokyo, Japan; or Ultima Electronics Corp. of Taipei Hsien, Taiwan (collectively, with MediaTek, Inc. ''respondents''). *Id.* The Commission also determined to issue cease and desist orders directed to Artronix Technology, Inc.; ASUSTek Computer, Inc.; ASUS Computer International; MSI Computer Corporation; TEAC America Inc.; EPO Science and Technology, Inc.; and LITE–ON Information Technology Corp. *Id.*

On February 10, 2006, complainants Zoran and Oak and respondent MediaTek filed, pursuant to 19 U.S.C. 1337(k) and Commission rule 210.76(a) (19 CFR 210.76(a)), a joint petition for rescission of the limited exclusion order and the cease and desist orders issued in the investigation based on a settlement agreement that resolves the underlying dispute between all of the parties, including all of the other respondents. On February 22, 2006, the Commission investigative attorney filed a response supporting the joint petition.

Having reviewed the parties' submissions, the Commission has determined that the settlement agreement satisfies the requirement of Commission rule 210.76(a)(1), 19 CFR 210.76(a)(1), for changed conditions of fact or law. The Commission therefore has issued an order rescinding the remedial orders previously issued in this investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.76(a)(1) of the Commission's Rules of Practice and Procedure (19 CFR 210.76(a)(1)).

By order of the Commission.

Issued: March 17, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–4154 Filed 3–21–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–564]

In the Matter of Certain Voltage Regulators, Components Thereof and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 17, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Linear Technology Corporation of Milpitas, California. Letters supplementing the complaint were filed on March 13 and 14, 2006. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain voltage regulators, components thereof and products containing same by reason of infringement of claims 1–14 and 23–35 of U.S. Patent No. 6,411,531 and claims 1–19, 31, 34, and 35 of U.S. Patent No. 6,580,258. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal 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 at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: David Hollander, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 16, 2006, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted

to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain voltage regulators, components thereof or products containing same by reason of infringement of one or more of claims 1–14 and 23–35 of U.S. Patent No. 6,411,531 and claims 1–19, 31, 34, and 35 of U.S. Patent No. 6,580,258, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Linear Technology Corporation, 1630 McCarthy Boulevard, Milpitas, California 95035.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Advanced Analogic Technologies, Inc., 830 East Arques Avenue, Sunnyvale, California 94085.

(c) David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting a response to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a permanent exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 17, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–4155 Filed 3–21–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act and Rivers and Harbors Act

Notice is hereby given that on March 9, 2006, a consent decree in *United States* v. *James H. Pflueger, et al.*, Civil Action No. 06–00140 SPK BMK, was lodged with the United States District Court for the District of Hawaii.

The complaint, filed concurrently with lodging of the consent decree, was brought on behalf of the Environmental Protection Agency (''EPA'') and the State of Hawaii, Department of Health, under Sections 309 and 504 of the Clean Water Act (''CWA''), 33 U.S.C. 1319 & 1364, Section 13 of the Rivers & Harbors Act of 1899 (''R&HA''), 33 U.S.C. 407, and State law. The complaint alleges that defendants James H. Pflueger, Pflueger Properties, and Pilaa 400 LLC illegally discharged storm water associated with their construction activities on the Island of Kauai, Hawaii, and seeks civil penalties and injunctive relief. The federal claims in the proposed complaint also include a claim for injunctive relief under R&HA Section 13, 33 U.S.C. 407, to address sediment discharges from defendants' property, and claims for civil penalties and injunctive relief for defendants' placement of unpermitted fill in stream courses on their property, in violation of CWA Section 404. Finally, the complaint includes state claims for violations of state storm water and water quality regulations.

The consent decree requires defendants to pay a $2 million civil penalty and to perform a Supplemental Environmental Project designed to reduce the inflow of pollution to receiving waters and improve water quality, at an estimated cost of $200,000. Finally, the decree requires defendants to complete measures necessary to abate further discharges of pollution and to repair the damage done to waterways on their property.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *James H. Pflueger, et al.*, D.J. Ref. No. 90–5–1–1–07871.

During the public comment period, the consent decrees may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. Copies of the consent decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $14.75 (25 cents per page reproduction cost) payable to the U.S. Treasury, for a copy of the consent decree without attachments. Requesters who desire copies of the attachments (which include oversize and color materials) should call to make separate arrangements for reproduction, which will be charged at the cost for outside commercial copying.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–2776 Filed 3–21–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,242 and TA–W–54,242A]

Badger Paper Mills, Inc., Pestigo, WI, and Oconto Falls, WI; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a split determination regarding workers' eligibility to apply for benefits available under the Trade Adjustment Assistance (TAA) Program. On March 22, 2004, the Department certified workers of Badger Paper Mills, Inc., Peshtigo, Wisconsin as

eligible to apply for TAA but not Alternative Trade Adjustment Assistance (ATAA). The Department's Notice was published in the **Federal Register** on May 24, 2004 (69 FR 29578). On May 25, 2004, a Revised Determination on Reconsideration regarding the workers' eligibility to apply for ATAA was issued. The Department's Notice was published in the **Federal Register** on June 8, 2004 (69 FR 32046).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The company official stated that the petition was intended to cover workers at the Peshtigo and Oconto Falls, Wisconsin facilities.

Information provided by the company official reveals that a significant proportion of workers at the Oconto Falls, Wisconsin facility were separated or threatened with separation during the relevant period and that the two Badger Paper Mills facilities operate as one manufacturing unit producing paper products. Further, new information provided by the company official reveal that a significant portion of workers at the Oconto Falls, Wisconsin facility are age fifty years or older, that workers possess skills which are not easily transferable to other jobs in the local area, and that conditions in the industry are adverse.

Based on these findings, the Department is amending this certification to include employees of Badger Paper Mills, Inc., Oconto Falls, Wisconsin.

The amended notice applicable to TA–W–54,242 is hereby issued as follows:

All workers of Badger Paper Mills, Inc., Peshtigo, Wisconsin (TA–W–54,242) and Badger Paper Mills, Inc., Oconto Falls, Wisconsin (TA–W–54,242A) who became totally or partially separated from employment on or after February 9, 2003, through March 22, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of March 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4139 Filed 3–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,321]

Charter Fabrics, Inc., New York, NY; Notice of Revised Determination of Alternative Trade Adjustment Assistance on Remand

On February 14, 2006, the U.S. Court of International Trade (USCIT) granted the Department's motion for voluntary remand in *Former Employees of Charter Fabrics, Inc.* v. *United States Secretary of Labor*, Court No. 05–00652.

A negative determination regarding the subject workers' eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) was issued on September 7, 2005. The determination stated that the investigation revealed that the skills of the worker group were easily transferable to other positions in the local commuting area.

During the remand investigation, the Department contacted the human resources official at the subject firm for information related to the ATAA investigation. Information provided by this company official revealed that there were few available jobs in the local area and in the industry at the time of separation.

At least five percent of the workforce at the subject firm is at least fifty years of age. Workers possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

''All workers of Charter Fabrics, Inc., New York, New York, who became totally or partially separated from employment on or after September 29, 2002 through December 31, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 2nd day of March 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4135 Filed 3–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,745]

Duffy Tool & Stamping, LLC., Muncie, IN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 30, 2006 in response to a worker petition filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 3054 on behalf of workers of Duffy Tool & Stamping, LLC., Muncie, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 3rd day of March, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4128 Filed 3–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,883]

Harris Bank, Chicago, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 22, 2006, in response to a petition filed on behalf of workers at Harris Bank, Chicago, Illinois.

The Department has determined that this petition is a photocopy of petition number TA–W–58,814, which was received on February 9, 2006. That petition investigation resulted in a negative determination issued on February 17, 2006, regarding the eligibility for workers of Harris N.A., Wire Transfer Department, a subsidiary of The Bank of Montreal Financial Group, Chicago, Illinois, to apply for worker adjustment assistance and alternative trade adjustment assistance.

Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 1st day of March, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4126 Filed 3–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,671]

Healthcare & Hospitality Products, Inc.; Sebastian Furniture Co. Division, Barling, AR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 19, 2006 in response to a worker petition filed by a state agency representative on behalf of workers at Healthcare & Hospitality Products, Inc., Sebastian Furniture Division, Barling, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 28th day of February, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4127 Filed 3–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,773]

Perfection Tool and Mold Corp Dayton, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 1, 2006 in response to a worker petition filed by a company official on behalf of workers at Perfection Tool & Mold Corp., Dayton, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 1st day of March 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4129 Filed 3–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,792]

Staffing Solutions, El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 6, 2006, in response to a worker petition filed by a company official on behalf of workers at Staffing Solutions, El Paso, Texas.

The petition has been deemed invalid. The petitioner is not considered a company official. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 3rd day of March 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4131 Filed 3–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of February 2006.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision)

described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–58,619; Woodard Furniture, LLC, Owosso, MI: January 12, 2005.
TA–W–58,623; WestPoint Homes, Inc., Formerly Westpoint Stevens, Inc., Corporate Office, West Point, GA: January 12, 2005.
TA–W–58,623A; WestPoint Homes, Inc., Management Information Center, West Point, GA: January 12, 2005.
TA–W–58,623B; WestPoint Homes, Inc., Management Information Center, Abbeville, AL: January 12, 2005.
TA–W–58,623D; WestPoint Homes, Inc., Alamance Division Office, Burlington, NC: January 12, 2005.
TA–W–58,623E; WestPoint Homes, Inc., Clemson Centre, Clemson, SC: January 12, 2005.
TA–W–58,623H; WestPoint Homes, Inc., Opelika Division Office, Opelika, AL: January 12, 2005.
TA–W–58,623I; WestPoint Homes, Inc., Engineering Office, Valley, AL: January 12, 2005.
TA–W–58,623J; WestPoint Homes, Inc., Towel Operations Building, Valley, AL: January 12, 2005.
TA–W–58,623K; WestPoint Homes, Inc., Wagram Division Office, Wagram, NC: January 12, 2005.
TA–W–58,623L; WestPoint Homes, Inc., Sales and Marketing Office, New York, NY: January 12, 2005.
TA–W–58,623M; WestPoint Homes, Inc., Sales and Marketing Office, Atlanta, GA: January 12, 2005.
TA–W–58,623N; WestPoint Homes, Inc., Sales and Marketing Office, Chicago, IL: January 12, 2005.
TA–W–58,623P; WestPoint Homes, Inc., Sales and Marketing Office, Elkin, NC: January 12, 2005.
TA–W–58,623Q; WestPoint Homes, Inc., Sales and Marketing Office, Harrisburg, NC: January 12, 2005.
TA–W–58,623S; WestPoint Homes, Inc., Sales and Marketing Office, Minneapolis, MN: January 12, 2005.
TA–W–58,623T; WestPoint Homes, Inc., Sales and Marketing Office, Narragansett, RI: January 12, 2005.
TA–W–58,623U; WestPoint Homes, Inc., Sales and Marketing Office, Noblesville, IN: January 12, 2005.
TA–W–58,623V; WestPoint Homes, Inc., Sales and Marketing Office, Plano, TX: January 12, 2005.
TA–W–58,623W; WestPoint Homes, Inc., Sales and Marketing Office, Rogers, AR: January 12, 2005.
TA–W–58,623X; WestPoint Homes, Inc., Sales and Marketing Office, Roswell, GA: January 12, 2005.
TA–W–58,623Y; WestPoint Homes, Inc., Clemson Centre, Clemson, SC: January 12, 2005.
TA–W–58,623Z; WestPoint Homes, Inc., Clemson Centre, Abbeville, AL: January 12, 2005.
TA–W–58,640; Gamco Products, Henderson, KY: January 14, 2005.
TA–W–58,697; Maxine Swim Group, Commerce, CA: January 4, 2005.
TA–W–58,737; Plymouth Rubber Co., Canton, MA: January 27, 2005.
TA–W–58,782; Ametek, Inc., Commercial Motors Division, Kent, OH: January 31, 2005.
TA–W–58,787; CommScope, Inc. of North Carolina, Including On Site Leased Workers of Job Seekers, Scottsboro, AL: January 27, 2005.
TA–W–58,801; Sony Electronics, Inc., Projection CRT Division, Leased Workers of Aerotek & Staffmark, Mt. Pleasant, PA: February 7, 2005.
TA–W–58,395; Boeing Company (The), Long Beach Division, Long Beach, CA: November 18, 2004.
TA–W–58,625; Cadence Innovation, Formerly Known as New Venture Industries, Grand Blanc, MI: January 11, 2005.
TA–W–58,522; DMB Hosiery, Inc., Fort Payne, AL: December 13, 2004.
TA–W–58,702; Kim Fai, Inc., San Francisco, CA: January 19, 2005.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–58,573; Cardell Corporation, dba Molex Automotive, Auburn Hills, MI: December 21, 2004.
TA–W–58,626; Nutone, Inc., Cincinnati, OH: January 11, 2005.
TA–W–58,758; Sony Electronics, Inc., Sony Direct View Set Assembly Division, On-Site Leased Workers Aerotek & Staffmark, Mt. Pleasant, PA: January 31, 2005.
TA–W–58,806; Intier Automotive Seating of America, Inc., Romech Division, Red Oak, IA: February 7, 2005.
TA–W–58,834; Morgan Advanced Technologies, USA, Exeter, RI: January 30, 2005.
TA–W–58,657; Young Stuff Apparel Group, New York, NY: January 13, 2005.
TA–W–58,666; TYK America, Inc., Irvona, PA: January 18, 2005.
TA–W–58,720; Kentucky Derby Hosiery Co., Inc., Plant 2, Including Leased Workers of Ablest Staffing, Mount Airy, NC: January 23, 2005.

The following certification has been issued. The requirement of supplier to a trade certified firm has been met.

TA–W–58,601; Gould Electronics, Inc., Div. of Nikko Materials Ltd, Chandler, AZ: January 9, 2005.
TA–W–58,708; Cortina Fabrics, Inc., Swepsonville, NC: November 4, 2005.

The following certification has been issued. The requirement of downstream producer to a trade certified firm has been met.

None.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–58,549; Vision Knit Technology, Inc., Gastonia, NC.
TA–W–58,623AA; WestPoint Homes, Inc., Clemson Centre, Calhoun Falls, SC.
TA–W–58,623C; WestPoint Homes, Inc., Biddeford Plant, Biddeford, ME.
TA–W–58,623F; WestPoint Homes, Inc., Daleville, IN.
TA–W–58,623G; WestPoint Homes, Inc., Longview Plant, Hickory, NC.
TA–W–58,623O; WestPoint Homes, Inc., Sales and Marketing Office, Daleville, IN.
TA–W–58,623R; WestPoint Homes, Inc., Sales and Marketing Office, Middletown, IN.

The investigation revealed that criteria (a)(2)(A)(I.B.)(Sales or production, or both, did not decline) and (a)(2)(B) (II.B) (shift in production to a foreign country) have not been met.

TA–W–58,777; JDS Uniphase, Inc., Agility Communications, Leased Workers From Spherion, Allentown, PA.
TA–W–58,793; Sirenza Microdevices, Inc., Broomfield, CO.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–58,559; T and H Sewing Co., San Francisco, CA.
TA–W–58,600; Tex-Tenn Corporation, Gray, TN.
TA–W–58,604; Cohn Athletic Mfg. and Service Company, St. James, MO.

TA–W–58,637; Carolina Mills, Inc., Dye and Finishing Group, Plant No. 9, Valdese, NC.

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports and (a) (2) (B) (II.C) (has shifted production to a foreign country) have not been met.

None.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–58,808; Lexmark International, Inc., Supply Chain Workforce, Printing Solutions $ Services Div., Lexington, KY.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

None.

Affirmative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–58,619; Woodard Furniture, LLC, Owosso, MI: January 12, 2005.

TA–W–58,623; WestPoint Homes, Inc., Formerly WestPoint Stevens, Inc., Corporate Office, WestPoint, GA: January 12, 2005.

TA–W–58,623A; WestPoint Homes, Inc., Management Information Center, West Point, GA: January 12, 2005.

TA–W–58,623B; WestPoint Homes, Inc., Management Information Center, Abbeville, AL: January 12, 2005.

TA–W–58,623D; WestPoint Homes, Inc., Alamance Division Office, Burlington, NC: January 12, 2005.

TA–W–58,623E; WestPoint Homes, Inc., Clemson Centre, Clemson, SC: January 12, 2005.

TA–W–58,623H; WestPoint Homes, Inc., Opelika Division Office, Opelika, AL: January 12, 2005.

TA–W–58,623I; WestPoint Homes, Inc., Engineering Office, Valley, AL: January 12, 2005.

TA–W–58,623J; WestPoint Homes, Inc., Towel Operations Building, Valley, AL: January 12, 2005.

TA–W–58,623K; WestPoint Homes, Inc., Wagram Division Office, Wagram, NC: January 12, 2005.

TA–W–58,623L; WestPoint Homes, Inc., Sales and Marketing Office, New York, NY: January 12, 2005.

TA–W–58,623M; WestPoint Homes, Inc., Sales and Marketing Office, Atlanta, GA: January 12, 2005.

TA–W–58,623N; WestPoint Homes, Inc., Sales and Marketing Office, Chicago, IL: January 12, 2005.

TA–W–58,623P; WestPoint Homes, Inc., Sales and Marketing Office, Elkin, NC: January 12, 2005.

TA–W–58,623Q; WestPoint Homes, Inc., Sales and Marketing Office, Harrisburg, NC: January 12, 2005.

TA–W–58,623S; WestPoint Homes, Inc., Sales and Marketing Office, Minneapolis, MN: January 12, 2005.

TA–W–58,623T; WestPoint Homes, Inc., Sales and Marketing Office, Narragansett, RI: January 12, 2005.

TA–W–58,623U; WestPoint Homes, Inc., Sales and Marketing Office, Noblesville, IN: January 12, 2005.

TA–W–58,623V; WestPoint Homes, Inc., Sales and Marketing Office, Plano, TX: January 12, 2005.

TA–W–58,623W; WestPoint Homes, Inc., Sales and Marketing Office, Rogers, AR: January 12, 2005.

TA–W–58,623X; WestPoint Homes, Inc., Sales and Marketing Office, Roswell, GA: January 12, 2005.

TA–W–58,623Y; WestPoint Homes, Inc., Clemson Centre, Clemson, SC: January 12, 2005.

TA–W–58,623Z; WestPoint Homes, Inc., Clemson Centre, Abbeville, AL: January 12, 2005.

TA–W–58,640; Gamco Products, Henderson, KY: January 14, 2005.

TA–W–58,737; Plymouth Rubber Co., Canton, MA: January 27, 2005.

TA–W–58,782; Ametek, Inc., Commercial Motors Division, Kent, OH: January 31, 2005.

TA–W–58,787; CommScope, Inc. of North Carolina, Including On Site Leased Workers of Job Seekers, Scottsboro, AL: January 27, 2005.

TA–W–58,801; Sony Electronics, Inc., Projection CRT Division, Leased Workers of Aerotek & Staffmark, Mt. Pleasant, PA: February 7, 2005.

TA–W–58,395; Boeing Company (The), Long Beach Division, Long Beach, CA: November 18, 2004.

TA–W–58,625; Cadence Innovation, Formerly Known as New Venture Industries, Grand Blanc, MI: January 11, 2005.

TA–W–58,522; DMB Hosiery, Inc., Fort Payne, AL: December 13, 2004.

TA–W–58,702; Kim Fai, Inc., San Francisco, CA: January 19, 2005.

TA–W–58,573; Cardell Corporation, dba Molex Automotive, Auburn Hills, MI: December 21, 2004.

TA–W–58,626; Nutone, Inc., Cincinnati, OH: January 11, 2005.

TA–W–58,758,; Sony Electronics, Inc., Sony Direct View Set Assembly Division, On-Site Leased Workers Aerotek & Staffmark, Mt. Pleasant, PA: January 31, 2005.

TA–W–58,806; Intier Automotive Seating of America, Inc., Romech Division, Red Oak, IA: February 7, 2005.

TA–W–58,657; Young Stuff Apparel Group, New York, NY: January 13, 2005.

TA–W–58,666; TYK America, Inc., Irvona, PA: January 18, 2005.

TA–W–58,720; Kentucky Derby Hosiery Co., Inc., Plant 2, Including Leased Workers of Ablest Staffing, Mount Airy, NC: January 23, 2005.

TA–W–58,601; Gould Electronics, Inc., Div. of Nikko Materials Ltd., Chandler, AZ: January 9, 2005.

TA–W–58,708; Cortina Fabrics, Inc., Swepsonville, NC: November 4, 2005.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–58,549; Vision Knit Technology, Inc., Gastonia, NC.

TA–W–58,623AA; WestPoint Homes, Inc., Clemson Centre, Calhoun Falls, SC.

TA–W–58,623C; WestPoint Homes, Inc., Biddeford Plant, Biddeford, ME.

TA–W–58,623F; WestPoint Homes, Inc., Daleville, IN.

TA–W–58,623G; WestPoint Homes, Inc., Longview Plant, Hickory, NC.

TA–W–58,623O; WestPoint Homes, Inc., Sales and Marketing Office, Daleville, IN.

TA–W–58,623R; WestPoint Homes, Inc., Sales and Marketing Office, Middletown, IN.

TA–W–58,777; JDS Uniphase, Inc., Agility Communications, Leased Workers From Spherion, Allentown, PA.

TA–W–58,559; T and H Sewing Co., San Francisco, CA.

TA–W–58,600; Tex-Tenn Corporation, Gray, TN.

TA–W–58,604; Cohn Athletic Mfg. and Service Company, St. James, MO.

TA–W–58,793; Sirenza Microdevices, Inc., Broomfield, CO.

TA–W–58,808; Lexmark International, Inc., Supply Chain Workforce, Printing Solutions $ Services Div., Lexington, KY.

The Department as determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–58,834; Morgan Advanced Technologies, USA, Exeter, RI.

TA–W–58,697; Maxine Swim Group, Commerce, CA.

The Department has determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

I hereby certify that the aforementioned determinations were issued during the month of February 2006. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 6, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–4141 Filed 3–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Louisiana

This notice announces a change in benefit period eligibility under the EB Program for Louisiana.

Summary: The following change has occurred since the publication of the last notice regarding the State's EB status:

• Louisiana's 13-week insured unemployment rate for the week ending February 4, 2006, fell below the 5.0 percent threshold causing Louisiana's EB period that began October 30, 2005, to trigger ''off'' effective February 25, 2006.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state ending an EB period, the State Workforce Agency will furnish a written notice to each individual who is currently filing a claim for EB of the forthcoming end of the EB period and its effect on the individual's rights to EB (20 CFR 615.13 (c)(4)).

Signed at Washington, DC, on March 3, 2006.

Emily Stover DeRocco,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. E6–4124 Filed 3–21–06; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until May 22, 2006.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, E-mail: *mcnamara@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0138.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Community Development Revolving Loan Program for Credit Union Application for Funds.

Description: NCUA requests this information from credit unions to assess financial ability to repay the loans and to ensure that the funds are used to benefit the institution and the community it serves. The respondents are financial institutions that serve specific membership groups.

Estimated No. of Respondents/Recordkeepers: 375.

Estimated Burden Hours Per Response: 8 hours.

Frequency of Response: Reporting, on occasion.

Estimated Total Annual Burden Hours: 200 hours.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on March 17, 2006.

Mary Rupp,

Secretary of the Board.

[FR Doc. E6–4130 Filed 3–21–06; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act

(Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 3, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 6, 2006 deadline.

2. *Date:* April 7, 2006.
Time: 8:30 to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Libraries and Archives, submitted to the Division of Public Programs at the February 6, 2006 deadline.

3. *Date:* April 10, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 6, 2006 deadline.

4. *Date:* April 19, 2006.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2006 deadline.

5. *Date:* April 20, 2006.
Time: 9 a.m. to 5 p.m.
Room: 315
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2006 deadline.

6. *Date:* April 21, 2006.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education Programs at the March 1, 2006 deadline.

7. *Date:* April 21, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 6, 2006 deadline.

8. *Date:* April 24, 2006.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2006 deadline.

9. *Date:* April 24, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 6, 2006 deadline.

10. *Date:* April 25, 2006.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education Programs at the March 1, 2006 deadline.

11. *Date:* April 25, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for We the People, submitted to the Office of Challenge Grants at the February 1, 2006 deadline.

12. *Date:* April 26, 2006.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2006 deadline.

13. *Date:* April 27, 2006.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education Programs at the March 1, 2006 deadline.

14. *Date:* April 28, 2006.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education Programs at the March 1, 2006 deadline.

15. *Date:* April 28, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 6, 2006 deadline.

Michael McDonald,
Advisory Committee Management Officer.
[FR Doc. E6–4093 Filed 3–21–06; 8:45 am]
BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board Public Service Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: Thursday, March 23, 2006, 10 a.m.–11 a.m. est (teleconference meeting)

Place: National Science Foundation, Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, National Science Board Office, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703–292–8096.

Purpose of Meeting: To provide advice and recommendations in the selection of the NSB Public Service Award recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Late Notice: Time and date of meeting were not established until March 14, 2006.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: March 16, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–2741 Filed 3–21–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act; National Science Board and Its Subdivisions; Notice of Meeting

DATE AND TIME: March 29–30, 2006.

March 29, 2006 8 a.m.–5:30 p.m. Sessions:

8 a.m.–9:30 a.m.—Open
9:30 a.m.–10 a.m.—Open
10 a.m.–11 a.m.—Open
11 a.m.–12 noon—Executive Closed
1 p.m.–1:30 p.m.—Open
1:30 p.m.–2:30 p.m.—Open
2:30 p.m.–4:30 p.m.—Open
4:30 p.m.–5:30 p.m.—Open

March 30, 2006 7:30 a.m.–3:30 p.m. Sessions:

7:30 a.m.–9:30 a.m.—Open
9:30 a.m.–10 a.m.—Closed
10 a.m.–11 a.m.—Open
11 a.m.–11:30 a.m.—Closed
11:30 a.m.–11:45 a.m.—Executive Closed
1 p.m.–1:15 p.m.—Closed
1:15 p.m.–3:30 p.m.—Open

PLACE: National Science Foundation, 4201 Wilson Blvd, Room 1235, Arlington, VA 22230.

PUBLIC MEETING ATTENDANCE: All visitors must report to the NSF's visitor's desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

CONTACT INFORMATION: Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for updated schedule. NSB Office: Dr. Robert Webber, (703) 292–7000.

STATUS: Part of this meeting will be closed to the public.

Part of this meeting will be open to the public.

Matters To Be Considered

Wednesday, March 30, 2006

Open

Committee on Programs and Plans Subcommittee on Polar Issues (8 a.m.–9:30 a.m.) Room 1235.

- Approval of September 2005 Minutes
- Progress in planning for International Polar Year
- Antarctic Treaty Actions requiring new national legislation
- Bering Sea Ecosystem research project
- Antarctic Resupply

Committee on Programs and Plans Task Force on Transformative Research (9:30 a.m.–10 a.m.) Room 1235.

- Approval of November-December 2005 Minutes
- Update on TR Workshop III, National Science Foundation, May 16, 2006
- Outcomes of previous TR workshops

Committee on Programs and Plans Task Force on International Science (10 a.m.–11 a.m.) Room 1235.

- Approval of November-December 2005 Minutes
- Update on Various Meetings with Agencies and Institutions in Washington, DC
- Discussion of Future Task Force Activities
- Update from NSF on the Status of Recommendations made in the 2000 NSB Interim Report on International Science

Committee on Programs and Plans Task Force on Hurricane Science and Engineering (1 p.m.–1:30 p.m.) Room 1235.

- Discussion of January 24 and February 7, 2006 Workshops
- Discussion of April 18, 2006 Workshop

Committee on Education and Human Resources Subcommittee on Science and Engineering Indicators (1:30 p.m.—2:30 p.m.) Room 1235.

- Approval of November 2005 Minutes
- Chairman's Remarks
- Discussion of *Science and Engineering Indicators 2006* Clearance and Rollout
- Evolution of Indicators
  - Purpose and current audience
  - Outreach
  - Presentation—paper and electronic
  - New data/indicators
  - Interim release of data

Committee on Education and Human Resources (2:30 p.m.–4:30 p.m.) Room 1235.

- Approval of February 2006 Minutes
- Background: NSF/EHR Evaluation Briefing Book
- Follow-up to February Discussion of Future Activities
- NSB/EHR Discussion of Potential STEM Education Commission
- Subcommittee on Science and Engineering Indicators
- Follow-up Discussion: Workshop on ''Engineering Workforce Issues and Engineering Education: What are the Linkages?'
- NSB items

Committee on Strategy and Budget (4:30 p.m.–5:30 p.m.) Room 1235.

- Approval of November 2005 Minutes
- Approval of November 2005 CSB/CPP Joint Session Minutes
- Status of the NSF Strategic Plan: FY 2003–2008, and schedule for NSB review and approval
- Status of FY 2007 Budget Request to Congress
- Process for developing FY 2008 Budget Request to Congress
- NSF Average Award Size, Duration, and Proposal Success Rate

Executive Closed

Ad hoc Committee on 2006 Vannevar Bush Award (11 a.m.–12 noon) Room 1235.

- Review and discussion of candidates
- Balloting

Thursday, March 30

Open

Committee on Programs and Plans (7:30 a.m.–9:30 a.m.) Room 1235.

- Approval of February 10, 2006 CPP Minutes
- Approval of November 30, 2005 CSB/CPP Joint Session Minutes
- Status Reports:
  - Task Force on Transformative Research
  - Task Force on International Science
  - Task Force on Hurricane Science and Engineering
  - Subcommittee on Polar Issues
- NSB Information Item: National Superconducting Cyclotron Laboratory—Plans for Review of the Proposed 5–Year Renewal of Support
  - Updates:
  - Atacama Large Millimeter Array (ALMA)
  - National Ecological Observatory Network (NEON)
  - NSF's Cyberinfrastructure Vision

Committee on Audit and Oversight (10 a.m.–11 a.m.) Room 1235.

- Approval of December 2005 Minutes
- Introduction of new NSF financial statement auditors

• Presentation of FY 2005 Merit Review Report
• Chief Financial Officer's Update

Closed

Committee on Programs and Plans (9:30–10).
• Awards and Agreements

Committee on Audit and Oversight (11–11:30)
• Pending Investigations (OIG Staff)

Plenary Sessions of the Board (11:30 a.m.–11:45 a.m. and 1 p.m.–3:30 p.m.)

Executive Closed Session (11:30 a.m.–11:45 a.m.) Room 1235.
• Approval of February 2006 Executive Closed Minutes
• Approval of Honorary Award Recipients
• Nominating Committee Election

Closed Session (1 p.m.–1:15 p.m.) Room 1235.
• Approval of February 2006 Closed Session Minutes
• Awards and Agreements
• Closed Committee Reports

Open Session (1:15 p.m.–3:30 p.m.) Room 1235.
• Approval of February 2006 Open Session Minutes
• Resolution To Close portions of May 2006 meeting
• Chairman's Report
○ NSB Congressional Testimony
○ Update on STEM Education Hearings
• Director's Report
○ NSF Congressional Update
• Open Committee Reports
• Presentation: Update on Grants.gov

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 06–2794 Filed 3–17–06; 4:26 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

FirstEnergy Nuclear Operating Company (FENOC); Notice of Consideration of Issuance of Amendment to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–66 and NPF–73, issued to FENOC (the licensee), for operation of the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2) located in Beaver County, Pennsylvania.

The proposed amendments requested by the licensee's February 25, 2005, license amendment request (LAR) would represent a full conversion from the current Technical Specifications (CTS) to a set of improved Technical Specifications (ITS) based on NUREG–1431, ''Standard Technical Specifications (STS) for Westinghouse Plants,'' Revision 2, dated April 2001. Some additional changes were proposed by the licensee to make the resulting ITS more consistent with Revision 3 of NUREG–1431 dated June 2004. The proposed amendments would also consolidate the BVPS–1 and 2 TSs into a single set of ITS applicable to both units. The attachment to the licensee's February 25, 2005, LAR consists of 10 volumes.

Volume 1 contains a copy of the licensee's transmittal letter, a detailed description of the contents and organization of the BVPS ITS conversion LAR, a status of Technical Specification Task Force (TSTF) changes to NUREG–1431, Revisions 2 and 3, a status of pending LARs, a list of beyond scope changes (BSIs), a CTS ''roadmap'' showing the disposition of each BVPS CTS and its relation to the proposed BVPS ITS in CTS order, an improved STS ''roadmap'' showing the correspondence of each improved STS to the proposed BVPS ITS and CTS in improved STS order, and the licensee's evaluation of environmental considerations for the proposed ITS conversion LAR.

NUREG–1431 has been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the NRC staff as part of an industry-wide initiative to standardize and improve the Technical Specifications (TSs) for nuclear power plants. As part of this submittal, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the CTS and using NUREG–1431 as a basis, proposed an ITS for BVPS–1 and 2. The criteria in the Final Policy Statement was subsequently added to Title 10 of the Code of Federal Regulations (10 CFR), Section 50.36, Technical specifications,'' in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

In addition to the conversion, the licensee also proposed 30 BSIs where the proposed requirements are different from the CTS and the STS of NUREG–1431. These include 25 items identified by the licensee as BSIs and 5 additional items that consist of TSTF Traveler Items that were pending at the time of the licensee's application, and which the NRC staff has determined it will treat as BSIs. The BSIs are identified later in this notice.

This notice is based on the application dated February 25, 2005, and the information provided to the NRC through the BVPS–1 and 2 ITS Conversion Web page. To expedite its review of the application, the NRC staff issued its requests for additional information (RAIs) through the BVPS–1 and 2 ITS Conversion Web page and the licensee addressed the RAIs by providing responses on the Web page. Entry into the database is protected so that only licensee and NRC reviewers can enter information into the database to add RAIs (NRC) or providing responses to the RAIs (licensee); however, the public can enter the database to only read the questions asked and the responses provided. To be in compliance with the regulations for written communications for license amendment requests and to have the database on the BVPS–1 and 2 dockets before the amendments would be issued, the licensee will submit a copy of the database in a submittal to the NRC after there are no further RAIs and before the amendments would be issued. The public can access the database through the NRC Web site at *http://www.nrc.gov* by the following process: (1) Click on the tab labeled ''Nuclear Reactors'' on the NRC home page along the upper part of the Web page, (2) then click on the link to ''Power Reactors'' which is under ''Regulated Reactors'' on the left hand side of the Web page, (3) then click on the link to ''Improved Standard Technical Specifications'' which is on right hand side of the page, (4) then click on the link for ''Improved Technical Specifications Data Base'' at the bottom of the page under the heading ''Conversion to Standard Technical Specifications,'' and (5) finally, click on the link to ''Beaver Valley Power Station Licensing Database,'' near the middle of the Web page, to open the database. The RAIs and responses to RAIs are organized by ITS Sections 1.0, 2.0, 3.0, 3.1 through 3.9, 4.0, and 5.0, and/or the BSI numbers. For most listed ITS sections or BSIs, there is an RAI which can be read by clicking on the ITS section or BSI number. The licensee's responses are shown by a solid triangle adjacent to the ITS section or BSI number, and, to read the response, you click on the triangle. To page down through the ITS sections

to the BSIs, click on ''next'' along the top of the page or on ''previous'' to return to the previous page.

The licensee has categorized the proposed changes to the CTS into five general groupings within the description of changes (DOC) section of the application. These groupings are characterized as administrative changes (i.e., ITS x.x, DOC A.xx), more restrictive changes (i.e., ITS x.x, DOC M.xx), relocated specifications (i.e., ITS x.x, DOC R.xx), removed detail changes (i.e., ITS x.x, DOC LA.xx), and less restrictive changes (i.e., ITS x.x, DOC L.xx). This is to say that the DOCs are numbered sequentially within each letter designator for each ITS Chapter, Section, or Specification, and the designations are A.xx for administrative changes, M.xx for more restrictive changes, R.xx for relocated specifications, LA.xx for removed detail changes, and L.xx for less restrictive changes. These changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

Administrative changes are those that involve restructuring, renumbering, rewording interpretation and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1431 and does not involve technical changes to the CTS. The proposed changes include: (a) Providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1431 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses. For each requirement in the STS that is more restrictive than the CTS that the licensee proposes to adopt in the ITS, the licensee has provided an explanation as to why it has concluded that adopting the more restrictive requirement is desirable to ensure safe operation of the facility because of specific design features of the plant.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TSs. Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in the 10 CFR 50.36(c)(2)(ii) and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in the attachment to the licensee's February 25, 2005, letter, which is entitled, ''A Description of the Beaver Valley Power Station, Improved Technical Specification (ITS) Conversion License Amendment Request (LAR),'' in Attachment 1 of the submittal. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TSs to administratively-controlled documents such as the quality assurance program, the UFSAR, the ITS Bases, the licensing requirements manual (LRM) that is incorporated by reference in the UFSAR, the core operating limits report, the offsite dose calculation manual, the inservice testing program, the inservice inspection program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also controlled pursuant to 10 CFR 50.59.

Removed detail changes, are changes to the CTS that eliminate detail and relocate the detail to a licensee-controlled document. Typically, this involves details of system design and function, or procedural detail on methods of conducting a surveillance requirement (SR). These changes are supported, in aggregate, by a single generic no significant hazards consideration (NSHC). The generic type of removed detail change is identified in italics at the beginning of the DOC.

Less restrictive changes are those where CTS requirements are relaxed or eliminated, or new plant operational flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TSs may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the improved STSs. Generic relaxations contained in NUREG–1431 were reviewed by the NRC staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design is being reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431, thus providing a basis for the ITS, or if relaxation of the requirements in the CTS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, removed detail, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are different from the requirements in both the CTS and the STS NUREG–1431. The BSIs are listed below in which the first 25 were identified by the licensee and addressed in Enclosure 4 to its application. The remaining 5 BSIs were identified by the NRC staff and were originally categorized as pending TSTF items by the licensee. In some cases, the BSI is addressed as a justification for deviation (JFD) from the STS, and identified as ITS x.x, JFD x. These BSIs to the conversion, listed in the order of the applicable ITS specification or section, are as follows [note that the words below that are capitalized are terms that are defined in the ITS]:

1. BSIs-1 and 2, propose changes to the BVPS–1 analog Rod Position Indication (RPI) system. BVPS–2 uses a digital RPI system and the proposed change does not apply to BVPS–2. The proposed changes would modify the CTS 3.1.3.2 notes to apply the 1-hour thermal soak time to all power levels instead of only to power levels above 50%, and to apply the exception to the ? 12 step-requirement during rod insertion and withdrawal (provided by

the Mode 2 footnote) to any time ''during rod motion.'' The CTS 3.1.3.1 notes would be moved directly to the ITS 3.1.4 limiting condition for operation (LCO) (ITS 3.1.4, DOC L.1, JFD 2, and ITS 3.1.7.1, DOC L.2, JFDs 2 and 5).

2. BSI–3 proposes changes to the improved STS time limit and power level specified in the note modifying SR 3.3.1.3. The proposed time limit would change from 1 to 7 days and the proposed power level would change from ≥15% rated thermal power (RTP) to ≥50% RTP. (ITS 3.3.1 and SR 3.3.1.3 note, DOC M.12, JFDs 4 and 6)

3. BSI–4 proposes changes to improved STS SR 3.3.1.6 (ITS SR 3.3.1.9) to change the time allowed to perform the surveillance from 24 hours after RTP is ≥50%, to 7 days. Additionally, the BSI proposes to change the requirement to perform SR 3.3.1.9 every 92 effective full-power days (EFPD) thereafter, to perform the surveillance ''once per fuel cycle'' (ITS 3.3.1, SR 3.3.1.9 note, DOC M.19, JFD 7).

4. BSI–5 proposes a change to ITS SR 3.3.4.2 frequency for verifying the operability of the Remote shutdown System control and transfer switches from 18 months to 36 months. CTS 3.3.3.5 currently does not have operability or SRs for these control and transfer switches (ITS 3.3.4, SR 3.3.4.2, DOC M.4, JFD 1).

5. BSI–6 proposes a change to the improved STS note that modifies the precision heat balance SR to require the surveillance to be performed within 30 days of reaching the specified power level vice within 24 hours of reaching the specified power level (CTS 4.2.5.2 and its note 2 do not contain a specified time limit in which to perform the heat balance) (ITS 3.4.1, SR 3.4.1.4 note, DOC M.1, JFD 1).

6. BSIs-7–11 propose revising the improved STS note for verifying reactor coolant pump (RCP) and residual heat removal (RHR) pump standby pump breaker alignment and power availability every 7 days (and within 24 hours after the pump is not in operation) to remove the requirement for performing the surveillance within 24 hours after the pump is not in operation and considering the SR to be met for a pump just removed from operation and to clarify that the starting time for the 7-day SR begins ''when the pump is removed from operation'' instead of when the pump ''is not in operation.'' The CTS SRs do not have a note containing the 24-hour requirement for the RCPs and RHR pumps (ITS SR 3.4.5.3, DOC L.3, JFD 2, SR 3.4.6.3, DOC L.4, JFD 2, SR 3.4.7.3, DOC L.5, JFD 4, SR 3.4.8.2, DOC L.4, JFD 3, and SR 3.5.9.2, DOC M.1, JFD 2).

7. BSI–12 proposes to change the improved STS 3.4.18, ''Isolated Loop Startup,'' LCO and SRs related to the isolated loop temperature to be more consistent with the BVPS safety analyses assumptions and CTS RCP start restrictions. The improved STS requires that the isolated loop temperature be no greater than 20° below the operating loop temperature before the cold leg isolation valve can be opened. The licensee proposes to change this requirement to, ''the cold leg temperature must be ≥ the minimum reactor coolant system (RCS) temperature assumed in the analysis before the cold leg isolation valve can be opened.'' In addition new temperature requirements are added similar to the temperature restrictions for starting an RCP in ITS 3.4.7, ''RCS Loops-Mode 5'' (ITS 3.4.18, DOC M.1, JFDs 1 and 2).

8. BSIs-13 and 14 propose to remove the valve isolation times from SR 3.7.2.1 for the main steam isolation valves (MSIVs), and SR 3.7.3.1 for the main feedwater isolation valves (MFIVs), main feedwater regulating valves and associated bypass valves and replace the times with a specific reference that the isolation time of each valve is ''within limits.'' The valve isolation times would be relocated to the LRM and future changes would be controlled under 10 CFR 50.59. The licensee states that this is consistent with the previously approved relocation of other valve response times such as for containment isolation valves. The CTS SR 4.7.1.5 for MSIVs would thus be changed; however, the licensee has no CTS for MFIVs (ITS SR 3.7.2.1, DOC LA.1, JFD 3, and ITS SR 3.7.3.1, DOC M.1, JFD 2).

9. BSIs-15–17 propose changes to the improved STS 3.7.7 and 3.7.8 to provide a new Action Condition C, rather than the application of LCO 3.0.3, for the case where 2 component cooling water (3.7.7) or 2 service water (3.7.8) trains are inoperable resulting in insufficient cooling capacity for decay heat removal in Mode 4 such that the plant cannot cool down to Mode 5 (ITS 3.7.7 and 3.7.8, DOC L.3, JFD 2).

10. BSI–18 proposes changes to ITS 3.7.9, Ultimate Heat Sink [UHS],'' Action Condition B, such that the proposed Action does not include the improved STS upper and lower temperature limits, but will require more frequent monitoring of the UHS temperature when the single BVPS limit for each unit is exceeded rather than an immediate unit shutdown, and would require a unit shutdown when the UHS temperature averaged over the previous 24 hours exceeds the limit (ITS 3.7.9 Action A, DOC L.1, JFD 2).

11. BSI–19 proposes to modify the notes in improved STS SRs 3.8.1.2 and 3.8.1.3 to add the words ''or based on operating experience,'' to supplement the phrase ''as recommended by the manufacturer'' (ITS SR 3.8.1.2 and SR 3.8.1.3, DOC L.19, JFD 17).

12. BSI–20 proposes to modify improved STS SR 3.8.1.5 by changing the requirement to ''Check for and remove accumulated water from each day tank [and engine mounted tank]'' to ''Check and remove water from each engine mounted tank.'' A note has been added to indicate that this is applicable to BVPS–1 only (ITS SR 3.8.1.5.1, DOC L.18, JFD 10).

13. BSI–21 proposes a note to ITS SR 3.8.2.1 to address the surveillances (SRs 3.1.8.13 and 3.8.1.14) used to verify the capability of the automatic load sequencer function of the emergency diesel generators (EDGs). The note states that the load sequencer function SRs only include the verification of loads applicable (necessary for operability) in the shutdown modes of operation (Modes 5 and 6) addressed by ITS 3.8.2 (ITS SR 3.8.2.1 Note 2, DOC L.3, JFD 5).

14. BSI–22 proposes to revise improved STS SR 3.8.2.1 by the addition of Note 3. Proposed Note 3 to ITS SR 3.8.2.1 states, ''SR 3.8.1.14 is only required to be met with the use of an actual or simulated loss of offsite power signal.'' SR 3.8.1.14 verifies the response of the emergency bus and EDG to an engineered safety features (ESF) signal in conjunction with a loss of offsite power. The proposed note is intended to clarify that in the shutdown modes addressed by SR 3.8.2.1, there are no required ESF actuation signals. The ESF actuation instrumentation specified in ITS 3.3.2 is only required to be operable in Modes 1–4, and ITS 3.8.2, ''AC Sources Shutdown,'' is only applicable in Modes 5 and 6 (ITS SR 3.8.2.1 Note 3, DOC L.3, JFD 6).

15. BSI–23 proposes to revise improved STS SR 3.9.3.3 by making changes to ITS 3.9.3.c.2 intended to be consistent with the design and licensing basis for BVPS–1 and 2. The LCO requirement that specifies that each penetration providing direct access from the containment atmosphere to the outside atmosphere be capable of being closed by an OPERABLE Containment Purge and Exhaust Isolation System and its associated surveillance (SR 3.9.3.3) are made applicable to Unit 2 only, and a provision is added for Unit 1 only (ITS 3.9.3.c.3) that allows the Purge and Exhaust System penetrations to be open when the system air is exhausted to an OPERABLE Supplemental Leak

Collection and Release System train (ITS 3.9.3.c.2, DOC L.1, JFD 3).

16. BSI–24 proposes to incorporate a note into ITS 3.9.5, ''RHR and Coolant Circulation—Low Water Level,'' and ITS 3.9.4, ''RHR and Coolant Circulation—High Water Level.'' NRC-approved TSTF–21 Revision 0, incorporated a Bases change to ITS 3.9.5 that provides an exception to the requirement for the RHR loop to be circulating reactor coolant to allow both RHR pumps to be aligned to the refueling water storage tank (RWST) to support filling or draining of the refueling cavity or for performance of required testing. This exception was incorporated into NUREG–1431, Revision 3. In a letter dated April 29, 1999, from W. D. Beckner, NRC, to J. Davis, Nuclear Energy Institute, the NRC recommended that TSTF–21, Revision 0 be revised to include an LCO exception note to remove the RHR loop from operation (*i.e.*, from circulating coolant) to support cavity fill and drain or to support required testing. The licensee's note incorporates this NRC recommendation which was not incorporated into TSTF–21, Revision 0 or NUREG–1431, Revision 3 (ITS 3.9.4, LCO Note 3 and ITS 3.9.5, LCO Note 3, DOC L.4, JFD 3).

17. BSI–25 proposes to revise improved STS 5.5.4.b which states, ''The provisions of SR 3.0.2 are applicable to the above required Frequencies [improved STS 5.5.4.a] for performing inservice testing activities.'' The licensee states that the list in improved STS 5.5.4.a lists some of the test intervals referenced in the inservice testing requirements but is not a comprehensive list. The licensee proposes to revise ITS 5.5.4.b to state, ''The provisions of SR 3.0.2 are applicable to the above required Frequencies and other normal and accelerated Frequencies specified in the Inservice Testing Program for performing inservice testing activities.'' This would expand the applicability of SR 3.0.2 provisions to all inservice testing requirements intervals and not just those listed in ITS 5.5.4.a (ITS 5.5.4.b, DOC L.4, JFD 34).

18. BSI–26 proposes to incorporate pending TSTF–412, Revision 0, which would provide actions and clarify the operability status when one steam supply to a turbine driven auxiliary feedwater pump is inoperable.

19. BSI–27 proposes to incorporate pending TSTF–451–T, Revision 0, which would provide corrections to the battery monitoring and maintenance program (Section 5.0) and the Bases of SR 3.8.4.2 (Section 3.8).

20. BSI–28 proposes to incorporate pending TSTF–453–T, Revision 2, which would provide a new specification in Section 3.1 and revise existing requirements in Section 3.3 to more completely address a rod withdrawal from subcritical conditions (RWFS) event. The TSTF adds new boron concentration operating restrictions during conditions when the power range nuclear instrumentation may not be able to provide the necessary trip function to protect against an RWFS event.

21. BSI–29 proposes to incorporate pending TSTF–472–T, Revision 0, which corrects a Bases error introduced by implementation of NRC-approved TSTF–283 (approved in November 2000). This affects Section 3.8.

22. BSI–30 proposes to incorporate pending TSTF–482, Revision 0, which would provide editorial enhancements to the Bases for LCO 3.0.6.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's public document room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on

a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–18, 76 South Main Street, Akron, OH 44308, attorney for the licensee.

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 25, 2005, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 16th day of March 2006.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–4153 Filed 3–21–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Proposed United States-Malaysia Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intent to initiate negotiations on a free trade agreement between the United States and Malaysia, request for comments, and notice of public hearing.

SUMMARY: The United States intends to initiate negotiations with Malaysia on a free trade agreement (FTA). The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the United States Trade Representative (USTR) in amplifying and clarifying negotiating objectives for the proposed agreement and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement.

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as their testimony, by April 21, 2006. A hearing will be held in Washington, DC, beginning on May 3, 2006, and will continue as necessary on subsequent days. Written comments are due by noon, May 12, 2006.

ADDRESSES: Submissions by electronic mail (notice of intent to testify, written testimony) should be submitted to: *FR0443@ustr.gov* (written comments). Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475. All other questions should be directed to Jeri Jensen, Deputy Assistant U.S. Trade Representative for Southeast Asia and Pacific Affairs, at (202) 395–6813 or Ted Posner, Office of the General Counsel, (202) 395–9512.

SUPPLEMENTARY INFORMATION:

1. Background

Under section 2104 of the Bipartisan Trade Promotion Authority Act of 2002 (TPA Act)(19 U.S.C. 3804), for agreements that will be approved and implemented through TPA procedures, the President needs to provide the Congress with at least 90 days written notice of his intent to enter into negotiations and identify the specific objectives for the negotiations. Before and after the submission of this notice, the President is to consult with appropriate Congressional committees and the Congressional Oversight Group regarding the negotiations. Under the Trade Act of 1974, as amended, the President must (i) Afford interested persons an opportunity to present their views regarding any matter relevant to any proposed agreement, (ii) designate an agency or inter-agency committee to hold a public hearing regarding any proposed agreement, and (iii) seek the advice of the U.S. International Trade Commission (USITC) regarding the probable economic effects on U.S. industries and consumers of the removal of tariffs and non-tariff barriers on imports pursuant to any proposed agreement.

On March 8, 2006, after consulting with relevant Congressional committees and the Congressional Oversight Group, the USTR notified the Congress that the President intends to initiate free trade agreement negotiations with Malaysia and identified specific objectives for the negotiations. In addition, the USTR has requested the USITC's probable economic effects advice. The USITC intends to provide this advice by June 30, 2006. This notice solicits views from the public on these negotiations and provides information on a hearing, which will be conducted pursuant to the requirements of the Trade Act of 1974.

2. Public Comments and Testimony

To assist the Administration as it continues to develop its negotiating objectives for the proposed agreement, the Chairman of the TPSC invites written comments and/or oral testimony of interested persons at a public hearing. Comments and testimony may address the reduction or elimination of tariffs or non-tariff barriers on any articles

provided for in the Harmonized Tariff Schedule of the United States (HTSUS) that are products of Malaysia, any concession which should be sought by the United States, or any other matter relevant to the proposed agreement. The TPSC invites comments and testimony on all of these matters and, in particular, seeks comments and testimony addressed to:

(a) General and commodity-specific negotiating objectives for the proposed agreement.

(b) Economic costs and benefits to U.S. producers and consumers or removal of tariffs and non-tariff barriers to U.S.-Malaysia trade.

(c) Treatment of specific goods (described by Harmonized System tariff numbers) under the proposed agreement, including comments on:

(1) Product-specific import or export interests or barriers,

(2) Experience with particular measures that should be addressed in the negotiations, and

(3) In the case of articles for which immediate elimination of tariffs is not appropriate, a recommended staging schedule for such elimination.

(d) Adequacy of existing customs measures to ensure Malaysian origin of imposed goods, and appropriate rules of origin for goods entering the United States under the proposed agreement.

(e) Existing Malaysian sanitary and phytosanitary measures and technical barriers to trade.

(f) Existing barriers to trade in services between the United States and Malaysia that should be addressed in the negotiations.

(g) Relevant electronic commerce issues that should be addressed in the negotiations.

(h) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

(i) Relevant investment issues that should be addressed in the negotiations.

(j) Relevant competition-related matters that should be addressed in the negotiations.

(k) Relevant government procurement issues that should be addressed in the negotiations.

(l) Relevant environmental issues that should be addressed in the negotiations.

(m) Relevant labor issues that should be addressed in the negotiations.

Comments identifying as present or potential trade barriers laws or regulations that are not primarily trade-related should address the economic, political and social objectives of such laws or regulations and the degree to which they discriminate against producers of the other country. At a later date, the USTR, through the TPSC, will publish notice of reviews regarding (a) the possible environmental effects of the proposed agreement and the scope of the U.S. environmental review of the proposed agreement, and (b) the impact of the proposed agreement on U.S. employment and labor markets.

A hearing will be held beginning on May 3, 2006, in Rooms 1, and 2, 1724 F Street, NW., Washington, DC. If necessary, the hearing will continue on subsequent days. Persons wishing to testify at the hearing must provide written notification of their intention by April 21, 2006. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement) to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact the TPSC Executive Secretary.

Interested persons, including persons who participate in the hearing, may summit written comments by noon, May 12, 2006. Written comments may include rebuttal points demonstrating errors of fact or analysis not pointed out in the hearing. All written comments must state clearly the position taken, describe with particularity the supporting rationale, and be in English. The first page of written comments must specify the subject matter, including, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement).

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: ''United States-Malaysia Free Trade Agreement'' followed by (as appropriate) ''Notice of Intent to Testify,'' ''Testimony,'' or ''Written Comments.'' Documents should be submitted as MSWord files or Word Perfect. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''Business Confidential'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 06–2773 Filed 3–21–06; 8:45 am]

BILLING CODE 3190–W6–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the

collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Survivor Questionnaire.

(2) *Form(s) submitted:* RL–94–F.

(3) *OMB Number:* 3220–0032.

(4) *Expiration date of current OMB clearance:* 5/31/2006.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 8,000.

(8) *Total annual responses:* 8,000.

(9) *Total annual reporting hours:* 1,391.

(10) *Collection description:* Under Section 6 of the Railroad Retirement Act, benefits are payable to the survivors or the estates of deceased railroad employees. The collection obtains information about the survivors if any, the payment of burial expenses and administration of estate when unknown to the Railroad Retirement Board. The information is used to determine whether and to whom benefits are payable.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E6–4088 Filed 3–21–06; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27263; 812–13065]

Man-Glenwood Lexington, LLC, et al.; Notice of Application

March 16, 2006.

AGENCY: Securities and Exchange Commission (''Commission'')

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'' for an exemption from sections 18(c) and 18(i) of the Act and an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit certain registered closed-end management companies to issue multiple classes of shares and to impose asset-based distribution fees.

Applicants: Man-Glenwood Lexington, LLC (''Lexington''), Man-Glenwood Lexington TEI, LLC (''TEI''), Glenwood Capital Investments, L.L.C. (''Adviser''), and Man Investments Inc. (''Distributor'').

Filing Dates: The application was filed on February 11, 2004, and amended on February 24, 2006, and March 15, 2006.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 10, 2006, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Steven Zoric Esq., Man Investments Inc., 123 N. Wacker Drive, 28th Floor, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 551–6871, or Janet M. Grossnickle, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. Lexington, TEI, and Man-Glenwood Lexington Associates Portfolio, LLC (the ''Portfolio Company'') are continuously offered closed-end management investment companies registered under the Act and organized as Delaware limited liability companies. Lexington and TEI (collectively, the ''Feeder Funds'') operate as feeder funds in a master-feeder structure and invest all or substantially all of their investable assets in the Portfolio Company. The Portfolio Company, which acts as the master fund to the Feeder Funds, is a fund of hedge funds.

2. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the Portfolio Company. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (''1934 Act''), acts as the principal underwriter to the Feeder Funds. The Distributor is under common control with the Adviser and is an affiliated person, as defined in section 2(a)(3) of the Act, of the Adviser.

Applicants request that the order also apply to any other continuously offered registered closed-end management investment company existing now or in the future for which the Adviser, the Distributor, or any entity controlling, controlled by, or under common control with the Adviser, the Distributor, or any entity controlling, controlled by, or under common control with the Adviser or the Distributor acts as investment adviser or principal underwriter, and which provides periodic liquidity with respect to its proportionate ownership interests (''Units'') pursuant to rule 13e–4 under the 1934 Act (collectively, with the Feeder Funds, the ''Funds'').[1]

3. The Feeder Funds continuously offer their Units to the public pursuant to rule 415 under the Securities Act of 1933 at net asset value and each currently offers a single class of Units subject to a front-end sales load as a percentage of the public offering price and an investor servicing fee. Units of the Feeder Funds are not listed on any securities exchange and do not trade on an over-the-counter system such as the National Association of Securities Dealers Automated Quotation System. Applicants do not expect that any secondary market will for the Units. To provide a limited degree of liquidity to investors, the Feeder Funds ordinarily will offer to repurchase Units quarterly at their then current net asset value pursuant to rule 13e–4 under the 1934 Act. The amount, timing and terms of any repurchase offer would remain within the discretion of each Feeder Fund's Board.

[1] Any Fund relying on the requested relief will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each investment company presently intending to rely on the requested relief is listed as an applicant.

4. The Feeder Funds seek the flexibility to be structured as multiple class funds and propose to offer two additional classes of Units.[2] Class A Units would be offered at net asset value, plus a front-end sales charge and an annual asset-based service and/or distribution fee of up to 0.25% and 0.75%, respectively, of average monthly net assets. Class 1 Units would be offered at net asset value with no front-end sales load or asset-based service and/or distribution fees and would be offered only to institutions and investors who compensate their financial intermediary directly. The Funds may in the future adopt these classes or another sales charge structure.

5. Applicants represent that any asset-based service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD Sales Charge Rule'') as if that rule applied to the Feeder Funds. Applicants also represent that each Fund will disclose in its prospectus, the fees, expenses and other characteristics of each class of Units offered for sale by the prospectus as is required for open-end multiple class funds under Form N–1A. As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and disclose any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[3] Each Fund and the Distributor will also comply with any requirements that may be adopted by the Commission regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements as if those requirements applied to the Funds and the Distributor.[4]

6. Each Feeder Fund will allocate all expenses incurred by it among the various classes of Units based on the net assets of the Feeder Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of a Feeder Fund allocated to a particular class of Units will be borne on a pro rata basis by each outstanding Unit of that class. The Funds will not offer exchange privileges. Units will not be subject to an early withdrawal charge.

Applicants' Legal Analysis

Multiple Classes of Units

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of Units of the Funds may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that permitting multiple classes of Units of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of Units.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of Unit holders. Applicants submit that the proposed arrangements would permit the Funds to facilitate the distribution of their Units and provide investors with a broader choice of Unit holder options. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. A Fund may create additional classes of Units or vary the characteristics of the proposed Class A and Class I Units, but each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Asset-Based Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to permit the Funds to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 12b–1, 17d–3, and 18f–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the NASD Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

[2] The Feeder Funds may designate their existing Units as Initial Class Units. The Initial Class would be closed to new investors and would only be available to those Unit holders who currently hold Initial Class Units.

[3] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (February 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information)

[4] Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions and Certain Manual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Investment Company Act Release No. 26341 (January 29, 2004) (proposing release).

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. 06–2764 Filed 3–21–06; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53508; File No. SR–NSX–2005–09]

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing of Proposed Rule Change To Amend Exchange Delisting Rules To Conform to Recent Amendments to Commission Rules Regarding Removal from Listing and Withdrawal from Registration

March 17, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 24, 2005, the National Stock Exchange SM (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the text of Article IV, section 3 of the Exchange's By-Laws to allow its delisting rules to be set forth in sufficient detail to be in conformity with the recently adopted Rule 12d2–2 under the Act.[3]

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

CODE OF REGULATIONS (BY-LAWS) OF NATIONAL STOCK EXCHANGE

* * * * *

ARTICLE IV.

Securities Listed on the Exchange

* * * * *

Delisting of Securities

Section 3.

3.1. Suspension and/or Delisting by Exchange

(a) No Change.

(b) Whenever the Board determines that it no longer is appropriate for a security to continue to be traded on the Exchange, it may institute proceedings to delist such security *by filing the appropriate application with the Commission (the ''Delisting Application'') to strike a class of securities from listing on the Exchange or from registration under Section 12(b) of the Exchange Act within a reasonable time after the Exchange makes the decision to suspend or delist a security. The Exchange shall provide: (1) notice to the issuer of the Exchange's decision to delist the issuer's securities; (2) an opportunity for the issuer to file an appeal* [Any issuer or any other person aggrieved by such action may seek relief] pursuant to the Exchange Rules governing adverse actions*; (3) public notice, no fewer than ten days before the delisting becomes effective, of the Exchange's final determination to delist the security via a press release and posting on the Exchange's website and (4) the prompt delivery of a copy of the Delisting Application to the issuer.*

(c) The securities of an issuer will be subject to suspension and/or withdrawal from listing and registration as a listed issue if any of the following conditions are found to exist:

(1) failure to comply with the listing standards and agreements; or

(2) sustained loss so that financial condition becomes so impaired that it is questionable to the Exchange whether the company can continue operations and/or meet its obligations as they mature *or*

(3) the entire class of securities has been called for redemption, maturity or retirement; appropriate notice thereof has been given; funds sufficient for the payment of all such securities have been deposited with an agency authorized to make such payments, and such funds have been made available to security holders; or

(4) the entire class of security has been redeemed or paid at maturity or retirement; or

(5) the instruments representing the securities comprising the entire class have come to evidence, by operation of law or otherwise, other securities in substitution therefore and represent no other right, except, if such be the fact, the right to receive an immediate cash payment (the right of dissenters to receive the appraised or fair value of their holdings shall not prevent the application of this provision); or

(6) all rights pertaining to the entire class of the security have been extinguished; provided, however, that where such an event occurs as a result of an order of a court or other governmental authority, the orders shall be final, all applicable appeals periods shall have expired and no appeals shall be pending.

Notwithstanding the foregoing, the Board may determine that the suspension or delisting of an issue is necessary for the protection of investors and the public interest.

3.2. Delisting by Issuer

A security, which in the opinion of the Board is eligible for continued listing, may be removed from listing upon the request or application of the issuer provided that the issuer: *(a)* submits a certified copy of a resolution adopted by the board of directors of the issuer authorizing withdrawal from listing and registration*;* [and] *(b)* a statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof*; (c) certifies its compliance with the Exchange's rules for delisting and applicable state laws; (d) submits a written notification to the Exchange no fewer than ten days before the issuer files the appropriate form with the Commission of its intent to withdraw its securities from listing and/or registration on the Exchange setting forth a description of the security involved, together with a statement of all the material facts relating to the reasons for the withdrawal and another notice to the Exchange, immediately after its withdrawal from listing becomes effective pursuant to the rules of the Commission; and (e) contemporaneous with providing written notice to the Exchange, the issuer issues a public notice of its intent to delist, and/or withdraw its securities from Section 12(b) registration, via a press release and, if it has a publicly accessible web site, post such notice on such website.*

[The issuer may be required to submit the proposed withdrawal to the security holders for their vote at a meeting for which proxies are solicited provided the stock is not also listed on another national securities exchange registered under Section 6 of the Act having similar requirements or on a facility of a national securities association registered under Section 15A of the Act having similar requirements.]

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.12d2–2.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NSX included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently adopted amendments to its Rule 12d2–2, Rule 19d–1 and Form 25 under the Act and Rule 101 of Regulation S–T to streamline the procedures for delisting a security traded on a national securities exchange and/or deregistering the security under section 12 of the Act.[4] The Commission decided, in order to give time for the national securities exchanges to adopt rules to comply with the new requirements in Rule 12d2–2 under the Act, that the Commission's rule amendments will not become effective until April 24, 2006.

The amendments to Rule 12d2–2 under the Act provide that an exchange may strike a class of securities from listing and/or withdraw the registration of such security under Section 12(b) by filing an application on Form 25. The delisting of the security will be effective ten days after Form 25 is filed with the Commission. The withdrawal from section 12(b) registration will take effect 90 days after the filing of the Form, or such shorter period as the Commission may determine. The Adopting Release also stated that the exchanges must, at a minimum, provide that (i) the exchange issues a notice to the issuer of the exchange's decision to delist its securities; (ii) the issuer is given the opportunity to appeal to the national securities exchange's board of directors or to a committee designated by the board; and (iii) the exchange provides public notice, no fewer than ten days before the delisting becomes effective, of the exchange's final determination to delist the security via a press release and posting on the exchange's Web site.

The Exchange's current By-Law provisions respecting the delisting of securities are contained in Article IV, section 3. The current provision provides that the Exchange's Board of Directors, in the exercise of its business judgment, may determine to delist a security by instituting a proceeding to delist the security. The issuer or any party aggrieved by such decision may choose to seek relief from such action by following Chapter X of the Exchange Rules governing adverse actions.

Although section 3.2(b) of Article IV provides procedural protection for the issuer of the security proposed to be delisted, the Exchange's By-Laws do not set forth the detailed steps required by the Adopting Release. While the Exchange's procedures contain the central elements—notice to the issuer and an opportunity for appeal—they are not spelled out in detail. Accordingly, this filing proposes to add the procedural requirements of: (i) Filing an application (Form 25) with the Commission; (ii) sending a notice to the issuer of the Exchange's decision to delist, which contains a notice of the appeals mechanism contained in Chapter X of the Rules and a copy of Form 25; and (iii) public notice of the determination to delist via a press release and the posting of such decision on the Exchange's Web site.

Section 3.2(c) of Article IV provides some specific events which may cause the Exchange to delist securities of issuers that meet the criteria. While the Exchange may delist any security for the protection of the investing public and the public interest, this filing proposes to adopt the rationale set forth in Rule 12d2–2(a)(1)–(a)(4) for delisting.

This filing also proposes to amend the criteria the Exchange would employ for issuers that desire to delist their security from the Exchange. This proposal would adopt certain provisions contained in Rule 12d2–2(c). Specifically, it would add provisions that: (i) The issuer must certify that it is in compliance with the Exchange's rules for delisting and applicable state law (in conformity with Rule 12d2–2(c)(2)(i)); (ii) the issuer must submit written notice (that is in conformity with the requirements of Rule 12d2–2(c)(2)(ii)) to the Exchange no fewer than ten days before the issuer files its application to delist with the Commission and another notice when such application becomes effective (in order to provide the Exchange with adequate notice of the effective date); and (iii) like the Exchange, the issuer is required to post notice of its decision to delist and make public disclosure of the same (in conformity with Rule 12d2–2(c)(iii)).

Finally, the proposal would eliminate the need for the issuer to submit the proposed withdrawal to the security holders for their vote in a meeting for which proxies are submitted. This requirement is no longer deemed by the Exchange to be necessary for the protection of shareholders as the procedural requirements of Rule 12d2–2(c) fulfills that need.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[5] in general, and section 6(b)(5),[6] in particular, in that the proposed rule change is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

(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:

[4] *See* Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005) (''Adopting Release'').

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

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 No. SR–NSX–2005–09 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2005–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2005–09 and should be submitted on or before April 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. 06–2793 Filed 3–17–06; 4:16 pm]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53485; File No. SR–PCX–2006–15]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Certain Housekeeping Changes to Its Schedule of Fees and Charges

March 14, 2006.

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 February 23, 2006, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The PCX filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend its Schedule of Fees and Charges (''Schedule'') in order to make certain housekeeping changes to the Schedule. The text of the proposed rule change is available at NYSE Arca, at *http://www.archipelago.com/regulation/filings.asp* and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to make certain housekeeping changes to the PCX Schedule.

Trade Related Charges

On the present Schedule, in the section entitled Trade Related Charges, the rate table shows transaction fees for different market participants. Presently the Firm transaction fee is $0.10 per contract, the Broker/Dealers transaction fee is $0.21 per contract and the Market Makers transaction fee is $0.21 per contract. Customers are not charged a transaction fee. In this same table is the On-Line Comparison fee, which is $0.05, assessed on all Firm, Broker/Dealer and Market Maker transactions. The On-Line Comparison fee is not assessed on Customer transactions.

Since the On-Line Comparison fee is the same for Firm, Broker/Dealer and Market Maker transactions, and is not charged on Customer transactions, the PCX proposes to simplify the Schedule by eliminating the separate On-Line Comparison fee and incorporating it into the transaction fees. Under the new Schedule, the rate table will now show the Firm transaction Fee of $0.15 per contract, the Broker/Dealer transaction fee of $0.26 per contract and the Market Maker transaction fee of $0.26 per contract. The Customer transaction fee will remain at zero. While the published rate schedule will appear different than it presently does, there is actually no net change to the amount the Exchange assesses for trade related charges.

Order Cancellation Fee

The PCX proposes to correct an error in the footnote associated with this fee. The PCX charges an OTP Firm a cancellation fee, under certain conditions, when it cancels a certain number of orders in any given month. In the footnote attached to this fee, under condition (i), where it reads ''500 contracts'' the word ''contracts'' was mistakenly used instead of ''orders.'' In order to make the rule text consistent, the PCX proposes to change the word to now read ''orders''.

2. Statutory Basis

The PCX believes the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act,[6]

[5] 15 U.S.C. 78f(b).

[6] 15.U.S.C. 78f(b)(4).

in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange, it has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File No. SR–PCX–2006–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PCX–2006–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2006–15 and should be submitted on or before April 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4121 Filed 3–21–06; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 U.S.C. 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2006–23551]

Notice of Request for Extension of Currently Approved Information Collection: Certification of Enforcement of Vehicle Size and Weight Laws

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to renew an information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on January 13, 2006. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 21, 2006.

ADDRESSES: You may send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2006–23551.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Davis, Department of Transportation, Federal Highway Administration, Office of Freight Management and Operations, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of Vehicle Size and Weight Laws.

OMB Control Number: 2125–0034 (Expiration Date: July 31, 2006).

Background: Title 23, U.S.C., 141, requires each State, the District of Columbia and Puerto Rico to file an annual certification that they are enforcing their size and weight laws on Federal-aid highways and that their Interstate System weight limits are consistent with Federal requirements to be eligible to receive an apportionment of Federal highway trust funds. Section 141 also authorizes the Secretary to require States to file such information as is necessary to verify that their certifications are accurate. To determine whether States are adequately enforcing their size and weight limits, each must submit an updated plan for enforcing their size and weight limits to the FHWA at the beginning of each fiscal year. At the end of the fiscal year, they must submit their certifications and sufficient information to verify that their enforcement goals established in the plan have been met. Failure of a State to file a certification, adequately enforce

its size and weight laws and enforce weight laws on the Interstate System that are consistent with Federal requirements, could result in a specified reduction of its Federal highway fund apportionment for the next fiscal year. In addition, section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689, 2701) requires each jurisdiction to inventory (1) its penalties for violation of its size and weight laws, and (2) the term and cost of its oversize and overweight permits.

Respondents: The State Departments of Transportation (or equivalent) in the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 4,160 hours.

Frequency: The reports must be submitted annually.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E6–4099 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–24015]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 16 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before April 21, 2006.

ADDRESSES: You may submit comments identified by DOT Docket Management System (DMS) Docket Number FMCSA–2006–24015 using any of the following methods:

- Web site: *http://dmses.dot.gov/submit.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or 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 DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@fmcsa.dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 16 individuals listed in this notice each have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Juan D. Adame

Mr. Adame, age 33, has had optic nerve atrophy in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2005, his ophthalmologist noted, ''I do feel that Mr. Adame has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Adame reported that he has driven tractor-trailer combinations for 7 years, accumulating 476,000 miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Thomas G. Danclovic

Mr. Danclovic, 46, has complete loss of vision in his right eye due to an intrauterine infection. The best corrected visual acuity in his left eye is 20/15. Following an examination in 2005, his ophthalmologist noted, ''In my opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Danclovic reported that he has driven tractor-trailer combinations for 5 years, accumulating 375,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Thomas W. Dufford

Mr. Dufford, 35, has had a chorioretinal scar in his right eye since birth. The visual acuity in his right eye is 20/200 and in the left, 20/20. His optometrist examined him in 2005 and noted, ''In my opinion, Thomas's visual condition would in no way affect his ability to safely operate a commercial motor vehicle. Based on his ophthalmic exam, I would recommend licensure with no restriction in privileges.'' Mr. Dufford reported that he has driven straight trucks for 3 years, accumulating 48,000 miles. He holds a Class C operator's license from Virginia. His

driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Williams L. Foote

Mr. Foote, 41, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/80. His ophthalmologist examined him in 2005 and noted, ''In summary, Mr. Foote has no problems with driving and certainly has visual acuity well enough to allow him to drive a commercial vehicle.'' Mr. Foote reported that he has driven straight trucks for 4 years, accumulating 7,200 miles. He holds a Class B CDL from Virginia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Joshua G. Hansen

Mr. Hansen, 44, has complete loss of vision in his right eye due to a traumatic injury sustained in 1990. The visual acuity in his left eye is 20/20. Following an examination in 2005, his optometrist noted, ''In my opinion, Josh Hansen has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Hansen reported that he has driven straight trucks for 10 years, accumulating 350,000 miles, and tractor-trailer combinations for 20 years, accumulating 1.8 million miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Daniel W. Henderson

Mr. Henderson, 47, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20 and in the left, count-finger-vision at 10 feet. His optometrist examined him in 2005 and noted, ''In my medical opinion, Mr. Henderson has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Henderson reported that he has driven straight trucks for 6 months, accumulating 35,000 miles and tractor-trailer combinations for 5 years, accumulating 550,000 miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Casey R. Johnson

Mr. Johnson, 27, has loss of vision in his left eye due to an injury he sustained as a child. The visual acuity in his right eye is 20/15 and in the left, count-finger-vision at 3 feet. Following an examination in 2005, his optometrist noted, ''I believe that Casey has demonstrated sufficient vision to operate a commercial vehicle.'' Mr. Johnson reported that he has driven straight trucks for 3½ years, accumulating 105,000 miles. He holds a Class D operator's license from Minnesota. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Craig T. Jorgensen

Mr. Jorgensen, 45, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/100 and in the left, 20/20. Following an examination in 2005, his optometrist noted, ''I believe he has sufficient vision to perform the driving tasks required to operate a commercial vehicle with standard restrictions of glasses required and outside mirrors.'' Mr. Jorgensen reported that he has driven straight trucks for 2 years, accumulating 10,000 miles and tractor-trailer combinations for 18 years, accumulating 198,000 miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Jose A. Lopez

Mr. Lopez, 51, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/100. Following an examination in 2005, his optometrist noted, ''In my opinion, Jose Lopez has sufficient vision to operate a commercial vehicle.'' Mr. Lopez reported that he has driven straight trucks for 1 year, accumulating 61,750 miles and tractor-trailer combinations for 3 years, accumulating 168,750 miles. He holds a Class A CDL from Connecticut. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

William F. Mack

Mr. Mack, 51, has complete loss of vision in the right eye due to a traumatic injury sustained in 1998. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2005, his optometrist noted, ''In my medical opinion, William has sufficient visual capability to safely operate a commercial vehicle.'' Mr. Mack reported that he has driven tractor-trailer combinations for 3 years, accumulating 150,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Bobby L. Mashburn

Mr. Mashburn, 37, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2005, his optometrist noted, ''In my opinion, Mr. Mashburn's amblyopia in his left eye will not limit his ability to drive a commercial vehicle.'' Mr. Mashburn reported that he has driven straight trucks for 13 years, accumulating 13,000 miles. He holds a Class C operator's license from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Albert L. Remsburg

Mr. Remsburg, 32, has loss of vision in his left eye due to retinal and corneal injury sustained in 1992. The best corrected visual acuity in his right eye is 20/20 and in the left, light perception only. Following an examination in 2005, his optometrist noted, ''In my medical opinion, the vision and visual field in the right eye is sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Remsburg reported that he has driven straight trucks for 7 years, accumulating 245,000 miles. He holds a Class B CDL from Maryland. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Willard L. Riggle

Mr. Riggle, 58, has had a chronic central scotoma in his right eye since childhood. The best corrected visual acuity in his right eye is count-finger-vision at 10 feet and in the left, 20/15. His ophthalmologist examined him in 2005 and noted, ''I feel Mr. Riggle has sufficient vision to operate a commercial vehicle.'' Mr. Riggle reported that he has driven straight trucks for 39 years, accumulating 975,000 miles, and tractor-trailer combinations for 25 years, accumulating 2.5 million miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Ricky L. Shepler

Mr. Shepler, 44, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/50. Following an examination in 2005, his optometrist noted, ''My opinion is, his vision is sufficient to operate a commercial vehicle.'' Mr. Shepler reported that he has driven straight trucks for 13 years, accumulating 650,000 miles. He holds a Class A CDL from Pennsylvania. His driving record

for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Barney J. Wade

Mr. Wade, 42, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/50. Following an examination in 2005, his optometrist noted, ''My opinion is that you have sufficient vision to perform the driving tasks required to operate a commercial motor vehicle.'' Mr. Wade reported that he has driven straight trucks for 18 years, accumulating 180,000 miles, tractor-trailer combinations for 18 years, accumulating 180,000 miles, and buses for 6 years accumulating 600 miles. He holds a Class A CDL from Mississippi. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Kenneth E. Walker

Mr. Walker, 43, has optic neuropathy in his right eye due to a traumatic injury sustained as a child. The visual acuity in his right eye is count-finger-vision at 3 feet and in the left, 20/20. Following an examination in 2005, his ophthalmologist noted, ''In my medical opinion, Mr. Walker has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Walker reported that he has driven straight trucks for 23 years, accumulating 690,000 miles and tractor-trailer combinations for 11 years, accumulating 880,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The agency will consider all comments received before the close of business April 21, 2006. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: March 15, 2006.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 06–2785 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Buffalo Southern Railroad, Inc.

(Waiver Petition Docket Number FRA–1999–6069)

The Buffalo Southern Railroad, Inc. (BSOR), seeks a waiver extension for FRA–1999–6069, which grants relief from 49 CFR part 223.11 of the Safety Glazing Standards for locomotives: BSOR 5010, 93, 100 and 105.

The FRA's field investigation reveals the locomotives in question are equipped with safety plate glass. Some of the glazing is marked and some is unmarked. Generally, all the locomotives are in good condition.

The BSOR is a short line freight carrier which travels over 30 miles through rural countryside and several small communities. There are still no police records of damage to the locomotives or any reports of employee injuries to any railroad employee.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 1999–6069) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

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). The Statement may also be found *http://dms.dot.gov*.

Issued in Washington, DC, on March 14, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–4091 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2006–23697]

Public-Private Partnership Pilot Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice; solicitation of comments and preliminary expressions of interest.

SUMMARY: Section 3011(c) of SAFETEA–LU authorizes the Secretary of Transportation to establish and implement a pilot program to demonstrate the advantages and disadvantages of public-private partnerships for certain new fixed guideway capital projects. This notice solicits comments and preliminary expressions of interest with respect to the Secretary of Transportation's establishment and implementation of the pilot program.

DATES: Comments and/or preliminary expressions of interest must be received by June 1, 2006. Late-filed comments or preliminary expressions of interest will be considered to the extent practicable.

ADDRESSES: To ensure your comments and/or preliminary expressions of

interest are not entered more than once into the DOT Jacket, please identify your submissions by the following docket number: FTA–2006–23697. Please make your submissions by only one of the following means:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for making submissions.
- Web Site: *http://dms.dot.gov.* Follow the instructions for making submission on the DOT electronic docket site:
- Fax: 1–202–493–2478.
- U.S. Post or Express Mail: Docket Management System, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must make reference to the ''Federal Transit Administration'' and include the docket number for this notice set forth above. Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posed without charge or alternative to *http://dms.dot.gov.*

Docket: For access to the DOT docket to read materials to this notice, please go to *hhtp://dms.dot.gov* at any time or to the Docket Management System.

FOR FURTHER INFORMATION CONTACT: David B. Horner, Esq., Chief Counsel, Federal Transit Administration, U.S. Department of Transporation, 400 Seventh Street, SW., Washington, DC 20590–0001. E-mail: *David.Horner@fla.dot.gov.* Telephone: (202) 366–4040. Office hours are from 8:30 a.m. to 6 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

A. Statutory Background

Section 3011(c) of SAFETEA–LU authorizes the Secretary of Transportation (the ''Secretary'') to establish and implement a pilot program (the ''Pilot Program'') to demonstrate the advantages and disadvantages of public-private partnerships (''PPPs'') for certain new ''fixed guideway capital projects,'' as defined by 49 U.S.C. 5302(a)(1) and (4) (each, a ''Project''). Section 3011(c) sets forth generally the terms and conditions of the Pilot Program.

- Section 3011(c)(2) authorizes the Secretary to select up to three Projects participate in the Pilot Program.
- Section 3011(c)(3) provides that no Project is eligible to participate in the Pilot Program unless the sponsor of a Project submits an application that contains, at a minimum: (i) An identification of a Project that has not entered into a full funding grant agreement or project construction grant agreement with FTA; (ii) a schedule and finance plan for the construction and operation of the Project; and (iii) an analysis of the costs, benefits and efficiencies of the proposed public-private partnership agreement.
- Section 3011(c)(4) provides that the Secretary may approve the application of a Project to participate in the Pilot Program if the Secretary determines that: (i) Applicable State and local laws permit public-private agreements for all phases of development, construction and operation of the project; (ii) the recipient is unable to advance the Project due to fiscal constraints; and (iii) the plan implementing the public-private partnership is justified.
- Section 3011(c)(5) limits the term of the Pilot Program from fiscal year 2006 through fiscal year 2009.

Beyond the terms set forth above, section 3011(c) states no operative criteria for implementation of the Pilot Program and is notably silent on what benefits, if any, participation in the Pilot Program would confer on a Project. However, section 3011(c) affords the Secretary broad discretion to devise or approve arrangements between government and private enterprise setting forth incentives and obligations within the framework of section 3011(c) that would demonstrate the advantages or disadvantages of PPPs as applied to eligible Projects.

Accordingly, FTA invites interested parties to comment on the following questions: (i) What, if any, operative criteria beyond those set forth in the statute should the Secretary adopt to implement the Pilot Program, and (ii) what, if any, benefits should the Secretary confer on Projects that participate in the Pilot Program? In answering these questions, interested parties should explain how such criteria and/or benefits would realize savings for Federal, State and/or local governments and otherwise improve the delivery and operation of transit infrastructure or a particular Project. Interested parties should also comment on whether it is significant that section 3011(c) provides no special funding for the Pilot Program. In addition, FTA invites comment generally on what, if any, changes in law or new financial incentives are appropriate or necessary to promote the participation of private enterprise in the delivery and operation of transit systems.

FTA also invites interested parties to respond to other questions set forth in this notice, including questions with respect to: (i) Appropriations for eligible Projects, (ii) the National Environmental Policy Act (''NEPA''), (iii) the Common Grant Rule, (iv) the seniority of the ''Federal Interest'' and (v) tax-exempt financing.

Finally, FTA solicits preliminary expressions of interest from project sponsors and others concerning participation in the Pilot Program.

B. Objective of Pilot Program

As a matter of public policy, PPPs are justified by the view that private enterprise, when appropriately compensated for performance and the assumption of risk, can deliver goods and services for less and on better terms than the public sector. The Pilot Program will evaluate this view as applied to the procurement and operation of eligible Projects.

1. *Procurement.* FTA invites comment on whether, and on what terms, the Pilot Program should stream-line FTA's discretionary grant-making process to promote PPPs that would realize significant savings in the procurement of eligible Projects. In particular, FTA seeks comment on how its New Starts application process—notably its due diligence and NEPA components—may be altered to accelerate project delivery (and thus reduce costs) without impairing FTA's duties as a steward of Federal funds and the environment.

Due Diligence. Throughout the New Starts application process, FTA performs detailed due diligence on all aspects of a proposed capital project, including reviewing ridership projections, cost estimates, forecasts of cash flows and financing capacity as well as evaluating State and lcoal political commitments to provide the ''local share'' of funding for the project. Because in many cases FTA (and by implication, the Nation's taxpayers) bear substantial economic risk with respect to the New Starts share that the project will experience cost overruns or delays or fail to realize projected travel travel-time savings (''Taxpayer Risk''), FTA's exhaustive due diligence attempts to minimize Taxpayer Risk at the planning and development stages of the project. Other than FTA's own due diligence,

there are no devices currently contemplated by the New Starts process that may be substituted for FTA's due diligence to reduce Taxpayer Risk in a way that would shorten the application process and realize savings for project sponsors. FTA believes, however, that such benefits may be achieved through arrangements typical of PPPs, notably the agreement of private enterprise to assume certain project risks in exchange for the opportunity to earn financial returns commensurate with the risks assumed. In practice, these arrangements include ''design-build'' agreements, equity investments by private contractors and other risk-shifting or risk-reducing devices customary in private sector project development transactions. FTA invites comment on whether and to what extent the Pilot Program should take into account, for purposes of determining the level of FTA's due diligence, the quality of construction and service warranties, the amount and risk of equity investments, the availability of legal and other professional opinions and the use and terms of indemnities, escrows and other devices that might reduce or shift Taxpayer Risk.

NEPA. It is axiomatic that a Federal agency and project sponsor must conduct an objective evaluation of the alternatives under study in a NEPA document, including the ''no-action'' alternative. To reduce Taxpayer Risk of third-party challenge to projects under NEPA (and to comply with regulations of the Council on Environmental Quality set forth at 40 CFR 1506.1), FTA generally prohibits project sponsors from taking any action that would advance any particular ''build'' alternative under study prior to the issuance of a Record of Decision (''ROD''). In design-build contracting, however, there may be good reasons to allow a sponsor to engage a single firm to conduct preliminary engineering and final design prior to the issuance of a ROD, including time savings, economies-of-scale, continuity of expertise and avoidance of multiple contracting. FTA invites comment on whether, and the extent to which, the Pilot Program should permit acquisition of engineering and design services prior to the issuance of a ROD. FTA invites comment, in particular, on whether the Pilot Program should adopt procedures with the same or similar effects as those described in 23 U.S.C. 112(b)(3)(D), as amended by section 1503 of SAFETEA–LU, concerning design-build contracts. If so, pursuant to what statutory authority would the Pilot Program adopt such procedures?

Likewise, to reduce their costs as far possible, project sponsors located in inflationary real estate markets may seek to acquire rights-of-way and parcels of land prior to the issuance of a ROD for reasons of ''hardship'' or ''protective purposes,'' as permitted by the Categorical Exclusion set forth at 23 CFR 771.117(d)(12). FTA invites comment on how the Pilot Program should construe the Categorical Exclusion to realize savings for project sponsors in connection with the acquisition of rights-of-way and parcels of land. In responding to the question, interested parties who propose an expansive construction of the Categorical Exclusion should explain why, if adopted by FTA, it would not materially increase Taxpayer Risk of legal challenge to an eligible Project.

Occasionally, a change in project scope after the issuance of a ROD may trigger the requirement for supplemental NEPA study, which could delay or even thwart a project under a public-private partnership. FTA invites comment on whether and how the Pilot Program should address NEPA to anticipate changes in project scope.

2. *Operation.* FTA invites comment on whether, and on what terms, the Pilot Program should provide grants for eligible Projects contemplated by long-term operation or concession agreements with private enterprise.

In the United States, the operation of transit facilities currently depends on significant State and local subsidies. FTA invites comment on how the Pilot Program might encourage transit systems to enter into PPPs that would reduce the amount of subsidy needed to operate a transit system. In particular, where a concession to operate a transit system requires by its terms a capital improvement, should the Pilot Program make available a grant to support such capital improvement in the event that improvement qualifies as an eligible Project?

C. Common Grant Rule

FTA interprets 49 CFR 18.25 (the ''Common Grant Rule'') to require that income to a Federal grantee generated by a federally-funded asset (''Program Income'') must be used by the grantee to reduce program costs, unless an alternative use of Program Income contemplated by the Common Grant Rule is authorized by regulation or agreement with the grantee. FTA invites comment on the extent to which the Pilot Program should authorize the use of Program Income to support a PPP that sponsors an eligible Project.

D. Seniority of the Federal Interest

FTA generally requires that any Federal funds used by a recipient to acquire an asset—the so-called ''Federal Interest''—be repaid in priority to all other claims with respect to that asset upon disposition. However, FTA has permitted the subordination of the Federal Interest and waived the requirement of repayment upon disposition, so long as such subordination or disposition was for an eligible transit purpose and the asset remained under the recipient's ''effective continuing control.'' FTA invites comment on the degree to which this flexibility would be useful in structuring a PPP.

In addition, 49 CFR part 640 refers expressly to the Transportation Infrastructure Financing and Innovation Act (''TIFIA''), which permits the subordination of the Federal Interest under certain conditions. FTA seeks comment on the extent to which loans, loan guarantees and other credit enhancing devices available under TIFIA might be used to facilitate the financing of an eligible Project.

E. Tax-Exempt Financing

Under section 142 of the Internal Revenue Code, certain public transportation projects are eligible for tax-exempt financing using private activity bonds (''PABs''). Additionally, under section 11143 of SAFETEA–LU, public transportation projects may be eligible to use private activity bonds not subject to State population-based bond issuance limits (''new PABs''). FTA seeks comment on the extent to which PABs or new PABs might assist in financing an eligible Project.

F. Preliminary Expressions of Interest

FTA is interested in receiving preliminary expressions of interest from project sponsors and others concerning participation in the Pilot Program. Preliminary expressions of interest should address the criteria set forth in sections 3011(c)(3) and (4) of SAFETEA–LU, and should be submitted to FTA on or before June 1, 2006. FTA intends to respond by July 15, 2006 to submissions that are timely filed. Depending on the response to the issues raised above and the number and nature of project proposals received, FTA may ask for additional detail from those submitting preliminary expressions of interest. Following FTA's establishment of the Pilot Program, FTA expects to issue a separate notice requesting formal proposals for participation in the Pilot Program.

Issued on March 16, 2006.

Sandra K. Bushue,

Deputy Administrator.

[FR Doc. 06–2744 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for modification of special permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. There applications have been separated from the new applications for special permits to facilitate processing.

DATES: Comments must be received on or before April 6, 1006.

ADDRESSES: *Address Comments to:* Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FUTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington DC, or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 16, 2006.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials, Special Permits & Approvals.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification of special permit	Nature of special permit thereof
7605–M	.....	Lockheed Martin Aeronautics Company, Fort Worth, TX.	49 CFR 173.62; 175.3; 176.83; 177.848.	7605	To modify the special permit to authorize additional Division 1.4S materials, and to authorize additional non-DOT specification packaging.
10481–M	.....	M–1 Engineering Limited, Bradfrod, West Yorkshire.	49 CFR 172.203; 173.318; 173.320; 178.338; 176.30; 176.76(h).	10481	To modify the special permit to authorize additional Division 2.2 materials and different design pressures.
10677–M	.....	Primus AB SE–171 26 Solna.	49 CFR 173.304(d)(3)(ii).	10677	To modify the special permit to authorize additional non-DOT specification packaging.
11691–M	.....	Coca-Cola Company, The, Atlanta, GA.	49 CFR 176.83(d); 176.331; 176.800(a).	11691	To modify the special permit to provide segregation relief for certain Class 8 corrosive materials in combination with other readily combustible materials as defined in § 176.2 of the Hazardous Materials Regulations.
11911–M	.....	Transfer Flow, Inc., Chico, CA.	49 CFR 177.834	11911	To modify the special permit to remove the requirement that hoses are not allowed to be attached to discharge outlets during transportation.
14205–M	.....	The Clorox Company, Pleasanton, CA.	49 CFR 173.306(a)(1) and 173.306(a)(3)(v).	14205	To modify the special permit to authorize alternative testing requirements, increase lot size, eliminate the requirement to carry a copy of the permit on motor vehicles and to change the proper shipping name to Consumer Commodity, ORM–D.
14292–M	.....	Honeywell International Inc., Morristown, NJ.	49 CFR 173.301(d)(2); 173.302(a)(3).	14292	To reissue the special permit originally issued on an emergency basis to authorize the transport of boron trifluoride in DOT Specification 3AAX and 3AA manifolded cylinders.

[FR Doc. 06–2745 Filed 3–21–06; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before April 21, 2006.

ADDRESSES: *Address Comments to:* Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 16, 2006.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials, Special Permits & Approvals.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14323–N	.....	Puritan Products, Bethlehem, PA.	49 CFR 173.158	To authorize the transportation in commerce of nitric acid, other than red fuming in UN6HA1 composite drums by highway. (Mode 1)
14325–N	.....	DF Young, Inc., Jamaica, NY.	49 CFR 49 CFR Table §172.101, Column (9B).	To authorize the transportation in commerce of certain Division 1.1 and 1.2 rockets which exceed quantities authorized for transportation by cargo aircraft only. (Mode 4)
14326–N	.....	West Isle Line, Alpaugh, CA.	49 CFR 174.85	To authorize the transportation in commerce of rail cars without the use of buffer cars on a class 2 restricted speed track during daylight hours. (Mode 2)

[FR Doc. 06–2746 Filed 3–21–06; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2006–23387; Notice 1]

Pipeline Safety: Request for Waiver; Alliance Pipeline L.P.

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

ACTION: Notice of intent to consider waiver request.

SUMMARY: Alliance Pipeline L.P. (APL) requested a waiver of compliance for the U.S. portion of its pipeline system in Class 1 and Class 2 locations to operate its pipeline at stress levels up to 80 percent of the pipeline's specified minimum yield strength (SMYS), and increase the design factor for its compressor station piping. APL also requested relief from the hydrostatic testing requirements for its compressor station piping and pressure relieving and limiting station equipment requirements.

DATES: Persons interested in submitting comments regarding this waiver request must do so by April 21, 2006.

ADDRESSES: Comments should reference Docket No. PHMSA–2006–23387 and may be submitted in the following ways:

- DOT Web site: *http://dms.dot.gov.* To submit comments on the DOT electronic docket site, click ''Comment/Submissions,'' click ''Continue,'' fill in the requested information, click ''Continue,'' enter your comment, then click ''Submit.''
- Fax: 202–493–2251.
- Mail: Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: DOT Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- E-Gov Web site: *http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Instructions: You should identify the docket number, PHMSA–2006–23387, at the beginning of your comments. If you submit your comments by mail, you should submit two copies. If you wish to receive confirmation that PHMSA received your comments, you should include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov,* and may access all comments received by DOT at *http://dms.dot.gov* by performing a simple search for the docket number.

Note: All comments will be posted without changes or edits to *http://dms.dot.gov* including any personal information provided.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: James Reynolds by telephone at 202–366–2786; by fax at 202–366–4566; by mail at DOT, Pipeline and Hazardous Materials Safety Administration (PHMSA), Pipeline Safety Program (PHP), 400 7th Street, SW., Room 2103, Washington, DC 20590, or by e-mail at *james.reynolds@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

Alliance Pipeline L.P. requests a waiver from the pipeline regulations to operate the U.S. portion of its pipeline in Class 1 and Class 2 locations—upstream of the Aux Sable Delivery Meter Station (mile post 0.0) to its interconnection with the Canadian portion of the APL system at the Canadian/United States border near Minot, North Dakota (mile post 874)—at stress levels up to 80 percent of the pipeline's SMYS. APL is also requesting a waiver to increase the design factor for its compressor station piping as well as relief from the hydrostatic testing requirements for its compressor station piping. Specifically, APL requests a waiver of compliance from the following regulatory requirements:

- 49 CFR 192.111—Design factor (F) for steel pipe;
- 49 CFR 192.201—Required capacity of pressure relieving and limiting stations;
- 49 CFR 192.505—Strength test requirements for steel pipelines to operate at a hoop stress of 30 percent or more of SMYS; and
- 49 CFR 192.619—Maximum allowable operating pressure: Steel or plastic pipelines.

The U.S. portion of APL's pipeline system transports natural gas from the Canadian/United States border near Minot, North Dakota to the Aux Sable Delivery Meter Station near Chicago, Illinois. The U.S. pipeline system was commissioned in 2000 and is comprised of 888-miles of 36-inch diameter X70 pipes, with varying wall thicknesses, and 7 compressor stations. The pipeline was constructed using fusion bonded epoxy (FBE) coating, heavy-wall pipe, and was mechanically welded. The pipeline was in-line inspected using a high resolution magnetic flux leakage tool, and all girth welds were inspected.

Pipeline System Analysis

APL conducted evaluations of the U.S. portion of its pipeline to confirm whether the system could safely and reliably operate at increased stress levels. As part of its evaluation, APL established a feasibility criterion to assess the safety and reliability of the pipeline to operate at stress levels up to 80 percent of the pipeline's SMYS. The feasibility criterion includes, but is not limited to:

- Developing operational commitments that would improve safety for any person residing, working, or recreating near the U.S. portion of its pipeline, including approximately 15 miles of pipeline located in high consequence areas.
- Conducting in-depth assessments of its existing pipeline equipment to ensure the equipment is capable of sustaining operations at increased pressures. In addition, APL plans to modify its existing pipeline to enhance the safety and reliability of the pipeline to operate at stress levels up to 80 percent of the pipe's SMYS.

APL also performed technical reviews of its pipeline and compared the threats imposed on a pipeline operating at 72 percent SMYS to those imposed on a pipeline operating at 80 percent SMYS. The following nine threats were analyzed: (1) Excavation damage; (2) external corrosion; (3) internal corrosion; (4) stress corrosion cracking; (5) pipe manufacturing; (6) construction; (7) equipment; (8) weather/outside factors; and (9) incorrect operation.

To combat increased threats to its pipeline, APL implemented preventive measures as part of its Integrity Management Program (IMP) to mitigate the threat imposed by excavation damage. APL also developed an External Corrosion Mitigation Plan to address the threat of external corrosion, and APL will rely on the integrity reassessment intervals of IMP to mitigate the threat of internal corrosion. To manage the threat of stress corrosion cracking, APL will implement magnetic particle examinations at any location(s) along its pipeline where damage to its FBE coating is detected. Based on APL's technical review of its pipeline, and its actions to prevent and mitigate potential threats to the pipeline, APL believes that its pipeline can be safely and reliably operated at stress levels up to 80 percent of the pipeline's SMYS, with no increased threats to the pipeline.

APL also requests relief from regulations which require that compressor station piping be subjected to Class 3 testing requirements, and seeks to increase the design factor from 50 percent SMYS to 54 percent SMYS. Additionally APL asks to be allowed to use ASME B31.8 requirements to test compressor stating piping to 1.4 times the maximum allowable operating pressure (MAOP) in lieu of § 192.505 requirements that require compressor station piping be tested to 1.5 times the pipe's MAOP.

APL noted that since ASME B31.8, which served as the early standard for the design, construction, and operation of natural gas transmission pipelines, PHMSA has improved its pipeline safety regulations to include an integrity management program and a focus on high consequence areas. APL also embraces PHMSA's commitment to improving pipeline safety, and believes its proposal will achieve a greater degree of safety than that currently provided by the regulations.

PHMSA will consider APL's waiver request and whether its proposal will yield an equivalent or greater degree of safety than that provided by the current regulations. After considering any comments received, PHMSA may grant APL's waiver request as proposed, with modifications and conditions, or deny APL's request. If the waiver is granted and PHMSA subsequently determines the effect of the waiver is inconsistent with pipeline safety, PHMSA may revoke the waiver at its sole discretion.

Authority: 49 U.S.C. 60118(c) and 49 CFR 1.53.

Issued in Washington, DC, on March 20, 2006.

Joy Kadnar,

Director of Engineering and Emergency Support.

[FR Doc. 06–2830 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2006–23998; Notice 1]

Pipeline Safety: Request for Waiver; Rockies Express Pipeline

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

ACTION: Notice of intent to consider waiver request.

SUMMARY: The Rockies Express Pipeline LLC (Rockies Express) has requested a waiver of compliance from the pipeline safety regulation that prescribes the design factor to be used in the design formula for steel pipe. The waiver will allow Rockies Express to operate at hoop stresses up to 80 percent specified minimum yield strength (SMYS) in Class 1 locations.

DATES: Persons interested in submitting comments regarding this waiver request must do so by April 21, 2006.

ADDRESSES: Comments should reference Docket No. PHMSA–2006–23998 and may be submitted in the following ways:

• The DOT Web site: *http://dms.dot.gov.* To submit comments on the DOT electronic docket site, click ''Comment/Submissions,'' click ''Continue,'' fill in the requested information, click ''Continue,'' enter your comment, then click ''Submit.''

• Fax: 202–493–2251.

• Mail: Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

• Hand Delivery: DOT Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• E-Gov Web site: *http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Instructions for submitting comments: You should identify the docket number (PHMSA–2006–23998) at the beginning of your comments. If you submit your comments by mail, please submit two copies. If you wish to receive confirmation that PHMSA received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov,* and may access all comments received by DOT at *http://dms.dot.gov* by performing a simple search for the docket number.

Note: All comments will be posted without changes or edits to *http://dms.dot.gov,* including any personal information provided.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: James Reynolds by telephone at 202–366–2786; by fax at 202–366–4566; by mail at DOT, Pipeline and Hazardous Materials Safety Administration (PHMSA), Pipeline Safety Program (PHP), 400 7th Street, SW., Room 2103, Washington, DC 20590; or by e-mail at *james.reynolds@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Rockies Express Pipeline LLC (Rockies Express) requests a waiver of compliance from the regulatory requirements at 49 CFR 192.111. This regulation prescribes the design factor to be used in the design formula in § 192.105. The design factors are found in the following table:

Class location	Design factor (F)
1	0.72
2	0.60
3	0.50
4	0.40

Rockies Express has begun construction on a 1,323-mile interstate natural gas pipeline. When complete, the 42-inch diameter pipeline will transport natural gas from Colorado and Wyoming to markets in the upper Midwest and Eastern United States. The waiver will allow Rockies Express to operate its pipeline at hoop stresses up to 80 percent SMYS in Class 1 locations. Rockies Express Pipeline LLC is a joint development of Kinder Morgan Energy Partners, L.P. and Sempra Pipelines & Storage, a unit of Sempra Energy. Rockies Express will operate its pipeline at a maximum allowable operating pressure (MAOP) of 1480 pounds per square inch gauge.

Rockies Express' long-term plan is to construct the pipeline in two or three phases from west to east: Western, Central, and Eastern.

• The Western segment of the project is comprised of approximately 710 miles of 42-inch pipeline extending from the Cheyenne Hub to an interconnection with Panhandle Eastern Pipe Line Company in Audrain County, Missouri.

• The Central segment will be comprised of approximately 425 miles of 42-inch pipeline extending from the terminus of the Western segment in Audrain County, Missouri to the Lebanon Hub in Lebanon, Ohio.

• The Eastern segment will be comprised of approximately 188 miles of 42-inch pipeline extending from the terminus of the Central segment at Lebanon, Ohio to a terminus at or near Clarington, Ohio.

System Description

The Rockies Express pipeline will be constructed of steel pipe utilizing Kinder Morgan's Material Standard M8270, X–70 and X–80 Grade High Strength, High Toughness Welded Line Pipe for High-Pressure Transmission Service. The Class 1 line pipe for the proposed Rockies Express pipeline will be API 5L Grade X80 or X70 longitudinal seam submerged arc welded pipe or helical seam welded pipe as specified in Kinder Morgan's Material Standard M8270. The pipe will be externally coated with fusion bond epoxy (FBE) and the field weld joints will be externally coated with field applied FBE.

The welding process on Rockies Express Pipeline Project will be 100 percent nondestructively tested. Any imperfections discovered will be repaired or removed prior to putting the line in-service. The Rockies Express Pipeline will be hydrostatically tested at no less then 100 percent SMYS. Prior to commissioning the pipeline for gas service, the pipeline will be surveyed with a multi-channel geometry smart tool capable of detecting anomalies including dents and buckles.

The Rockies Express pipeline will be located in a common right-of-way with other pipelines for approximately 90 percent of the pipeline route. Kinder Morgan will install variable resistance bonds between the various pipelines and metallic structures sharing the right-of-way to eliminate stray electrical currents, and to equalize the voltage potentials between the Rockies Express pipeline and other underground metallic structures.

Risk Analysis

Kinder Morgan conducted a risk analysis for Rockies Express and compared the risk associated with using a 0.80 design criteria to using a 0.72 design criteria. Kinder Morgan determined that there is no significant increase in the risk associated with using the 0.80 design criteria for this type of pipe. Kinder Morgan has taken under consideration the following nine risk areas: (1) Stress corrosion cracking; (2) manufacturing defects; (3) weather/outside factors; (4) welding and fabrication defects; (5) equipment failure; (6) equipment impact (third party damage); (7) external corrosion; (8) internal corrosion; and (9) incorrect operation.

According to Kinder Morgan, only in the areas of external corrosion, internal corrosion, and, incorrect operation did the risk analysis show a slightly higher degree of risk associated with using a 0.80 design factor. Kinder Morgan asserts that the pipe wall designed with a 0.80 design factor indicates a slightly higher risk factor because it is manufactured with a thinner wall pipe than the pipe designed with a 0.72 design factor. Kinder Morgan further states that because the pipe designed with a 0.80 design factor operates at higher stress levels, the factor of safety between the MAOP and the pipe's SMYS is reduced. Kinder Morgan and Rockies Express indicated that they will employ several control and prevention programs to mitigate these increased risks.

For the reasons stated, Rockies Express is requesting a waiver from the regulatory requirements at 49 CFR 192.111 for its Rockies Express Pipeline Project, and is seeking to operate its new interstate Rockies Express pipeline at hoop stresses up to 80 percent SMYS in Class 1 locations.

PHMSA will consider Rockies Express' waiver request and whether its proposal will yield an equivalent or greater degree of safety than that currently provided by the regulations. After considering any comments received, PHMSA may grant Rockies Express' waiver request as proposed, with modifications and conditions, or deny the request. If the waiver is granted and PHMSA subsequently determines the effect of the waiver is inconsistent with pipeline safety, PHMSA reserves the right to revoke the waiver at anytime.

Authority: 49 U.S.C. 60118(c) and 49 CFR 1.53.

Issued in Washington, DC, on March 17, 2006.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 06–2831 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2006–23448; Notice 1]

Pipeline Safety: Request for Waiver; Maritimes & Northeast Pipeline, L.L.C.

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

ACTION: Notice of intent to consider waiver request.

SUMMARY: Maritimes & Northeast Pipeline, L.L.C. (M&N) requests a waiver of compliance for the U.S. portion of its pipeline system in Class 1, 2, and 3 locations to operate at stress levels up to 80 percent; 67 percent; and 56 percent respectively, of the pipeline's specified minimum yield strength (SMYS).

DATES: Persons interested in submitting comments on the waiver request described in this Notice must do so by April 21, 2006.

ADDRESSES: Comments should reference Docket No. PHMSA–2006–23448 and may be submitted in the following ways:

• DOT Web site: *http://dms.dot.gov.* To submit comments on the DOT electronic docket site, click ''Comment/Submissions,'' click ''Continue,'' fill in the requested information, click ''Continue,'' enter your comment, then click ''Submit.''

• Fax: 202–493–2251.

• Mail: Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

• Hand Delivery: DOT Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• E-Gov Web Site: *http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Instructions: You should identify the docket number, PHMSA–2006–23448, at the beginning of your comments. If you submit your comments by mail, you should submit two copies. If you wish to receive confirmation that PHMSA received your comments, you should include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov,* and may access all comments received by DOT at *http://dms.dot.gov* by performing a simple search for the docket number.

Note: All comments will be posted without changes or edits to *http://dms.dot.gov* including any personal information provided.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: James Reynolds by telephone at 202–366–2786; by fax at 202–366–4566; by mail at DOT, Pipeline and Hazardous Materials Safety Administration (PHMSA), Pipeline Safety Program (PHP), 400 7th Street, SW., Room 2103, Washington, DC 20590; or by e-mail at *james.reynolds@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Maritimes & Northeast Pipeline, L.L.C. requests a waiver of compliance for the U.S. portion of its pipeline system in Class 1, 2, and 3 locations to operate at stress levels up to 80 percent; 67 percent; and 56 percent respectively, of the pipeline's SMYS. Specifically, M&N requests a waiver of compliance from the following regulatory requirements:

• 49 CFR 192.111—Design factor (F) for steel pipe;

• 49 CFR 192.201—Required capacity of pressure relieving and limiting stations;

• 49 CFR 192.503—General Requirements;

• 49 CFR 192.611—Change in class location: Confirmation or revision of maximum allowable operating pressure; and

• 49 CFR 192.619—Maximum allowable operating pressure: Steel or plastic pipelines.

The proposed waiver would apply to approximately 203 miles of M&N's 24-inch diameter pipeline. This portion of pipeline extends from M&N's Baileyville, Maine compressor station near the U.S./Canada border to Westbrook, Maine; and includes two compressor stations. The current maximum allowable operating pressure (MAOP) of the mainline system is 1440 pounds per square inch gauge (psig).

M&N placed its pipeline in service on December 1, 1999. The pipeline is operated by M&N Operating Company, LLC—a wholly owned subsidiary of Duke Energy Gas Transmission. The pipeline is 24-inch diameter, Grade X–70 pipe with varying wall thicknesses. One hundred percent of the pipeline's girth welds were inspected using radiography, and the pipeline—including girth welds—are coated with fusion bonded epoxy. M&N tested the Class 1 and 2 pipelines to 125 percent MAOP; the Class 3 pipeline was tested to 150 percent MAOP. In addition, M&N performed an in-line inspection of its pipeline in 2002 and no anomalies were detected.

Pipeline System Analysis

M&N conducted evaluations of the U.S. portion of its pipeline to confirm whether the system could safely and reliably operate at increased stress levels. As part of its evaluation, M&N analyzed and compared the threats imposed on a pipeline operating at 72 percent SMYS to those imposed on a pipeline operating at 80 percent SMYS; including: (1) External corrosion; (2) internal corrosion; (3) stress corrosion cracking; (4) pipe manufacturing; (5) construction; (6) equipment; (7) immediate failure due to puncture; (8) delayed failure due to resident defects or damage; (9) incorrect operation; and (10) weather/outside factors. M&N asserts that any impact(s) that potentially threaten the integrity of its pipeline, as a consequence of the line operating at higher stress levels, have been addressed.

M&N requests a waiver of compliance from the regulatory requirements at 49 CFR 192.111. This regulation prescribes the design factor to be used in the design formula in § 192.105. The design factors are found in the following table:

Class location	Design factor (F)
1	0.72
2	0.60
3	0.50
4	0.40

M&N is proposing to use a design factor for its existing pipeline of 80 percent SMYS for Class 1; 67 percent SMYS for Class 2; and 56 percent SMYS for Class 3. M&N notes that if the waiver is granted, it intends to operate its pipeline in the future with a design factor of 80 percent SMYS for Class 1; 60 percent SMYS for Class 2; and 50 percent SMYS for Class 3.

M&N also requests a waiver from § 192.201(a)(2)(i) which states if the MAOP is 60 psig or more, the pressure may not *exceed* MAOP plus 10 percent, or the pressure that produces a hoop stress of 75 percent SMYS, which ever is lower. M&N proposes to set the over pressure protection for the waiver sections to 104 percent of the pipeline MAOP. This setting is based on the ratio of 75 percent to 72 percent of SMYS.

M&N additionally requests a waiver from the requirements of § 192.503(c) which limits the maximum hoop stress allowed to 80 percent of the pipeline's SYMS if air, natural gas, or inert gas is used as the test medium. M&N desires to test its compressor station piping to 82 percent SMYS.

Section 192.611 requires an operator to confirm or revise the MAOP of its pipeline if the hoop stress corresponding to the established MAOP is not commensurate with the present class location. M&N notes that any class location changes that occur subsequent to this proposed waiver will be filed under separate waiver requests.

PHMSA will consider M&N's waiver request and whether its proposal will yield an equivalent or greater degree of safety than that currently provided by the regulations. After considering any comments received, PHMSA may grant M&N's waiver request as proposed, with modifications and conditions, or deny M&N's request. If the waiver is granted and PHMSA subsequently determines the effect of the waiver is inconsistent with pipeline safety, PHMSA may revoke the waiver at its sole discretion.

Authority: 49 U.S.C. 60118 (c) and 49 CFR 1.53.

Issued in Washington, DC, on March 20, 2006.

Joy Kadnar,

Director of Engineering and Emergency Support.

[FR Doc. 06–2829 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34830]

Kansas City Transportation Company LLC—Lease and Assignment of Lease Exemption—Kansas City Terminal Railway Company and Kaw River Railroad, Inc.

Kansas City Transportation Company LLC (KCTL), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease from Kansas City Terminal Railway Company (KCT) approximately 25.73 miles of rail line in the Kansas City Terminal District in Jackson County, MO, and Wyandotte County, KS. KCTL also seeks to acquire by assignment from Kaw River Railroad, Inc. (KRR) the operating and lease rights over all tracks owned by KCT which are currently subleased to KRR and over all tracks owned by The Kansas City Southern Railway Company (KCS) which are leased to KRR. KCTL, a wholly owned subsidiary of KCT, states that it expects to enter into one or more agreements with contract operators, but that it will retain the common carrier obligation.[1]

The lines KCTL seeks to acquire by lease are: all leads and tracks connecting to the KCT Joint Track, including KCT Main 1 west of Osage Ave. to 12th Street in Kansas City, KS; KCT Main 2 west of Osage Ave. to Kansas Ave. in Kansas City, KS; KCT's Blue River Yard (KCT track nos. 402–405 and 933) and KCT's Mill Street Yard (KCT track nos. 1010–1018, 1020–1023, and 1030–1047) and certain other KCT leads and tracks (KCT track nos. 90, 109, 238, 243, 450, 451, 604, 610, 650, 664, 666, 276W, 278W, 280W, 4031, 4033, 4350, 4364, 4653, 4709, 5800, 5538, 1063, 1070, 1091, 6108, 6109, 6411, 6428 and 6481, and KCT's rights over Procter & Gamble's plant tracks).

The lines that KCTL seeks to acquire by assignment are: (i) The leads and tracks located (a) between the facilities of Inland Container on Kansas Avenue in Kansas City, KS, and the facilities of Constar Plastics, Inc., on Armourdale Parkway in Kansas City, KS, and (b) between the facilities of Lite-Weight Products, Inc., on Kansas Avenue in Kansas City, KS, and the facilities of Ace Pallet on Argentine Boulevard in Kansas City, KS, (ii) KCS's 12th Street yard located south of 12th Street in Kansas City, MO, and (iii) KCS's Armourdale Yard, located near the facilities of Kaw River Shredding on South 12th Street in Kansas City, KS.

KCTL states that there are no milepost designations associated with the rail lines being leased or assigned. The total length of the lines is 33.2 track miles (including yard tracks), including 7.5 miles of KCS tracks incidental to the principal transaction. KCTL will also have incidental rights over the KCT Joint Tracks for continued access to the tracks and interchange locations. Interchange with Union Pacific Railroad Company, BNSF Railway Company, KCS, Norfolk Southern Railway Company, and Iowa, Chicago and Eastern Railroad Corporation will continue at points in and around Kansas City where KRR and KCS have interchanged, or as otherwise agreed to by KCTL and the other railroads involved.

This transaction is related to STB Finance Docket No. 34831, *Kansas City Terminal Railway Company—Intra-Corporate Exemption—Kansas City Transportation Company LLC,* wherein KCT seeks to continue in control of KCTL upon KCTL's becoming a Class III rail carrier.[2]

KCTL certifies that its projected revenues will not result in the creation of a Class II or Class I rail carrier, and that its projected annual revenues will not exceed $5 million.

The transaction was expected to be consummated on March 1, 2006, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34830, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each

[1] Under 49 U.S.C. 10902 and the Board's rules at 49 CFR 1150.31, if KCTL elects to enter into agreements with contract operators, the operators must file a request with the Board for authority prior to commencing operations.

[2] On February 27, 2006, the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters, filed a petition for a stay of the transactions encompassed by both notices of exemption. The stay request was denied by decision served on February 28, 2006.

pleading must be served on Ronald A. Lane, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 14, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–2717 Filed 3–21–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34831]

Kansas City Terminal Railway Company—Intra-Corporate Exemption—Kansas City Transportation Company LLC

Kansas City Terminal Railway Company (KCT) has filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a transaction within a corporate family. The transaction involves KCT's continuance in control of its wholly owned subsidiary Kansas City Transportation Company LLC (KCTL), upon KCTL's becoming a Class III rail carrier.

This transaction is related to STB Finance Docket No. 34830, *Kansas City Transportation Company LLC—Lease and Assignment of Lease Exemption—Kansas City Terminal Railway Company and Kaw River Railroad, Inc.*,[1] wherein KCTL: (1) seeks to acquire by lease from KCT approximately 25.73 miles of rail line in the Kansas City Terminal District in Jackson County, MO, and Wyandotte County, KS; and (2) seeks to acquire by assignment from Kaw River Railroad, Inc. (KRR) the operating and lease rights over all tracks owned by KCT which are currently subleased to KRR, and over all tracks owned by The Kansas City Southern Railway Company which are leased to KRR.

The transaction was expected to be consummated on March 1, 2006, the effective date of the exemption (7 days after the exemption was filed).

KCT states that this is an intra-corporate family transaction that will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(3).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34831, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Ronald A. Lane, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 14, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–2716 Filed 3–21–06; 8:45 am]

BILLING CODE 4915–01–P

[1] On February 27, 2006, the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters, filed a petition for a stay of the transactions encompassed by both notices of exemption. The stay request was denied by decision served on February 28, 2006.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8611

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8611, Recapture of Low-Income Housing Credit.

DATES: Written comments should be received on or before May 22, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Recapture of Low-Income Housing Credit.

OMB Number: 1545–1035.

Form Number: 8611.

Abstract: IRC section 42 permits owners of residential rental projects providing low-income housing to claim a credit against their income tax. If the property is disposed of or if it fails to meet certain requirements over a 15-year compliance period and a bond is not posted, the owner must recapture on Form 8611 part of the credits taken in prior years.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 7 hours, 50 minutes.

Estimated Total Annual Burden Hours: 7,842.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 14, 2006.

Glenn Kirkland,

IRS Reports Clearance Office.

[FR Doc. E6–4102 Filed 3–21–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5754

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5754, Statement by Person(s) Receiving Gambling Winnings.

DATES: Written comments should be received on or before May 22, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at Larnice.Mack@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Statement by Person(s) Receiving Gambling Winnings.

OMB Number: 1545–0239.

Form Number: 5754.

Abstract: Section 3402(q)(6) of the Internal Revenue Code requires that a statement be given to the payer of certain gambling winnings by the person receiving the winnings when that person is not the winner or is one of a group of winners. It enables the payer to prepare Form W–2G, Certain Gambling Winnings, for each winner to show the wings taxable to each and the amount withheld. IRS uses the information on Form W–2G to ensure that recipients are properly reporting their income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Responses: 306,000.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 61,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 14, 2006.

Glenn Kirkland,

IRS Reports Clearance Office.

[FR Doc. E6–4104 Filed 3–21–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8288–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8288–B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.

DATES: Written comments should be received on or before May 22, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Property Interests.

OMB Number: 1545–1060.

Form Number: 8288–B.

Abstract: Section 1445 of the Internal Revenue Code requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Code sections 1445(b) and (c) allow the withholding to be reduced or eliminated under certain circumstances. Form 8288–B is used to apply for a withholding certificate from IRS to

reduce or eliminate the withholding required by Code section 1445.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 5,079.

Estimated Time Per Respondent: 5 hours, 40 minutes.

Estimated Total Annual Burden Hours: 28,798.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 14, 2006.

Glenn Kirkland,

IRS Reports Clearance Office.

[FR Doc. E6–4106 Filed 3–21–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–182–78]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–182–78, Transfers of Securities Under Certain Agreements (Section 1.1058–1(b)).

DATES: Written comments should be received on or before May 22, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Transfers of Securities Under Certain Agreements.

OMB Number: 1545–0770.

Regulation Project Number: FI–182–78.

Abstract: Section 1059 of the Internal Revenue Code provides tax-free treatment for transfers of securities pursuant to a securities lending agreement. The agreement must be in writing and is used by the taxpayer, in a tax audit situation, to justify nonrecognition treatment of gain or loss on the exchange of the securities.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and not-for-profit institutions.

Estimated Number of Respondents: 11,742.

Estimated Time Per Respondent: 50 minutes.

Estimated Total Annual Burden Hours: 9,781.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 10, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4107 Filed 3–21–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Revenue Procedure 97–27]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–27, Changes in Methods of Accounting.

DATES: Written comments should be received on or before May 22, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Changes in Methods of Accounting.

OMB Number: 1545–1541.

Regulation Project Number: Revenue Procedure 97–27.

Abstract: The information requested in Revenue Procedure 97–27 is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the terms and conditions of that change.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents/ Recordkeepers: 3,000.

Estimated Time per Response: 3 hours, 1 minute.

Estimated Total Annual Burden Hours: 9,083.

The following paragraph applies to all the collections of information covered by this notice.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 10, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4108 Filed 3–21–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3903

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3903, Moving Expenses.

DATES: Written comments should be received on or before May 22, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Moving Expenses.

OMB Number: 1545–0062.

Form Number: 3903.

Abstract: Internal Revenue Code section 217 requires itemization of various allowable moving expenses. Form 3903 is used to compute the moving expense deduction and is filed with Form 1040 by individuals claiming employment related moves. The data is used to help verify what the expenses are deductible and that the deduction is computed correctly.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households.

Estimated Number of Respondents: 678,678.

Estimated Time Per Respondent: 9 hours, 8 minutes.

Estimated Total Annual Burden Hours: 773,693.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 14, 2006.

Glenn Kirkland,

IRS Reports Clearance Office.

[FR Doc. E6–4109 Filed 3–21–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–130477–00, REG–130481–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–130477–00; REG–130481–00 (TD 8987), Required Distributions From Retirement Plans (§ 1.403(b)–3).

DATES: Written comments should be received on or before May 22, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Required Distributions From Retirement Plans.

OMB Number: 1545–0996.

Regulation Project Number: REG–130477–00; REG–130481–00.

Abstract: These regulations relate to the required minimum distributions from qualified plans, individual retirement plans, deferred compensation plans under section 457, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit institutions, and state, local, or tribal governments.

Estimated Number of Respondents: 8,400.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 8,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 10, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4110 Filed 3–21–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–107047–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–107047–00 (TD 8985), Hedging Transactions (§ 1.1221–2).

DATES: Written comments should be received on or before May 22, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Hedging Transactions.

OMB Number: 1545–1480.

Regulation Project Number: REG–107047–00.

Abstract: This regulation deals with the character and timing of gain or loss from certain hedging transactions entered into by members of a consolidated group of corporations. The regulation applies when one member of the group hedges its own risk, hedges the risk of another member, or enters into a risk-shifting transaction with another member. Also, this regulation clarifies the character of gain or loss from the sale or exchange of property that is a part of a business hedge. A taxpayer must identify the hedging transaction on its book and records before the close of the day on which the taxpayer enters into it and must also identify the item, items, or aggregate risk being hedged. The information will

be used to verify that a taxpayer is properly reporting its business hedging transactions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 127,100.

Estimated Time Per Respondent: 1 hour, 20 minutes.

Estimated Total Annual Burden Hours: 171,050.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 10, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4111 Filed 3–21–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–33

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–33, Section 9100 Relief for 338 Elections.

DATES: Written comments should be received on or before May 22, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Section 9100 Relief for 338 Elections.

OMB Number: 1545–1820.

Revenue Procedure Number: Revenue Procedure 2003–33.

Abstract: Revenue Procedure 2003–33 provides qualifying taxpayers with an extension of time pursuant to § 301.9100–3 of the Procedure and Administration Regulations to file an election described in § 338(a) or § 338(h)(10) of the Internal Revenue Code to treat the purchase of the stock of a corporation as an asset acquisition.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 60.

Estimated Average Time Per Respondent: 5 hours.

Estimated Total Annual Reporting Burden: 300.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 10, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4112 Filed 3–21–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference).

The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 18, 2006 from 11:30 a.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Tuesday, April 18, 2006, from 11:30 a.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: March 16, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–4101 Filed 3–21–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 18, 2006.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, April 18, 2006 from 9 a.m. ET to 10 a.m. ET via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–2085, or write Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Audrey Y. Jenkins. Ms. Jenkins can be reached at 1–888–912–1227 or 718–488–2085, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 16, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–4103 Filed 3–21–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference).

The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 19, 2006, at 2:30 p.m. e.t.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, April 19, 2006 at 2:30 p.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: March 16, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–4113 Filed 3–21–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (28–1903)]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 21, 2006.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, Fax (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–New (28–1903).''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–New (28–1903)'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Contract for Training and Employment (Chapter 31, Title 38 U.S. Code), VA Form 28–1903.

OMB Control Number: 2900–New (28–1903).

Type of Review: Existing collection in use without an OMB number.

Abstract: VA Form 28–1903 is used to standardize contracts agreements between VA and training facilities/vendors providing vocational rehabilitation training and employment to veterans. VA uses the data collected to ensure that veterans are receiving the training/employment as agreed in the contract.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 9, 2005 at pages 73327–73328.

Affected Public: Business or other for-profit, Not for-profit institutions, Individuals or households, and Farms.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,200.

Dated: March 15, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–4160 Filed 3–21–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Genomic Medicine Program Advisory Committee; Notice of Establishment

As required by Section 9(a)(2) of the Federal Advisory Committee Act, the Department of Veterans Affairs hereby gives notice of the establishment of the Department of Veterans Affairs (VA) Genomic Medicine Program Advisory Committee. The Secretary of Veterans Affairs has determined that establishing the Committee is both necessary and in the public interest.

The Committee will provide advice to the Secretary of Veterans Affairs on the scientific and ethical issues related to the establishment, development, and operation of a genomic medicine program, and will make recommendations to utilize both genetic and other medical information in concert in order to promote optimal medical care and research that contributes to the Department's knowledge of diseases and disability. Specifically, the Committee will assess the potential impact of a VA genomic medicine program on existing VA patient care services, make recommendations regarding policies and procedures for tissue collection, storage and analysis, make recommendations on the development of a research agenda and recommend approaches by which research results can be incorporated into routine medical care.

Committee members shall be appointed by the Secretary of Veterans Affairs from among knowledgeable experts and veterans with special competence to evaluate the genomic medicine needs of the Department. The Committee shall report regularly to the Secretary of Veterans Affairs on its major activities and recommendations.

Dated: March 16, 2006.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–2786 Filed 3–21–06; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
March 22, 2006

Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, and 175
Hazardous Materials: Revision of Requirements for Carriage by Aircraft; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173 and 175

[Docket No. RSPA–02–11654 (HM–228)]

RIN 2137–AD18

Hazardous Materials: Revision of Requirements for Carriage by Aircraft

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

ACTION: Final rule.

SUMMARY: This final rule amends the requirements in the Hazardous Materials Regulations (HMR) for the transportation of hazardous materials by aircraft. This final rule clarifies the applicability of part 175; clarifies the exceptions from regulation for operator equipment and supplies, special aircraft operations, and passengers and crewmembers; revises separation distances for the shipment of radioactive materials by cargo aircraft; and updates the regulations to comply with security requirements for explosive special permits. These changes are being made to finalize outstanding petitions for rulemaking, convert certain special permits into regulations, and promote international harmonization, where appropriate.

DATES: The effective date of these amendments is October 1, 2006. Voluntary compliance is authorized April 21, 2006.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

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I. Background

The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) govern the transportation of hazardous materials in commerce by all modes of transportation, including aircraft. Parts 172 and 173 of the HMR include requirements for classification and packaging of hazardous materials, hazard communication, and training of employees who perform functions subject to the requirements in the HMR. Part 175 contains requirements applicable to all aircraft operators transporting hazardous materials by air, and outlines exceptions allowing passengers and crew members to carry hazardous materials aboard aircraft under certain conditions. In addition, aircraft operators must comply with the FAA hazardous materials training requirements in 14 CFR parts 121 or 135, as appropriate.

In this final rule, the Pipeline and Hazardous Materials Safety Administration (PHMSA), with the concurrence of the Federal Aviation Administration (FAA), is adopting amendments to part 175 and other sections of the HMR applicable to the transportation of hazardous materials by aircraft. These amendments will:

(1) Modify or clarify requirements to promote compliance and enforcement;

(2) Enhance the security of transportation of explosives by aircraft; and

(3) Facilitate international commerce.

On February 26, 2002, the Research and Special Programs Administration (RSPA)—the predecessor agency to PHMSA—published an advance notice of proposed rulemaking (ANPRM; 67 FR 8769) inviting public comments on how to improve the clarity of the HMR requirements for transporting hazardous materials by aircraft. We received 26 comments in response to the ANPRM. On November 10, 2004, RSPA published a notice of proposed rulemaking (NPRM; 69 FR 76044) proposing specific changes to the HMR sections applicable to the transportation of hazardous materials by aircraft. On January 21, 2005, (70 FR 3179) in response to requests from interested parties, we extended the comment period on the NPRM until March 18, 2005.

We received 24 comments addressing issues raised by the NPRM from the following: Air Line Pilots Association, International (ALPA); United Parcel Service, Inc. (UPS); Air Transport Association (ATA); FedEx Express; trade associations such as the International Association of Airport Duty Free Stores; individual air carriers; and others involved in the transportation of hazardous materials by aircraft. Most commenters were supportive of PHMSA(s efforts to revise part 175 in order to clarify certain requirements and make the part more user-friendly.

In this final rule, we are adopting most changes proposed in the NPRM. Relevant portions of the comments are discussed in the following sections of the preamble.

II. Section-by-Section Review

A. Sections 175.1 and 175.5 Purpose, Scope and Applicability

Part 175 of the HMR prescribes requirements for all aircraft operators transporting hazardous materials in commerce in the United States. The requirements in part 175 are in addition to requirements contained in parts 171, 172, and 173 (see § 175.1). Part 175 applies to the acceptance for

transportation, loading, and transportation of hazardous materials in any aircraft within the United States and aircraft of United States registry anywhere in air commerce (see § 175.5). Part 175 includes exceptions from the requirements of the HMR for those aircraft under the direct, exclusive control of a government and not used for commercial purposes (see § 175.5).

In this final rule, we are modifying § 175.1 to indicate part 175 applies to any person who performs, attempts to perform, or is required to perform a function subject to the HMR, including:

(1) Air carriers, indirect air carriers, and freight forwarders and their flight and non-flight employees, agents, subsidiary and contract personnel (including cargo, passenger and baggage acceptance, handling, loading and unloading personnel); and

(2) Air passengers that carry any hazardous material on their person or in their carry-on or checked baggage.

In its comments, the Council on Radionuclides and Radiopharmaceuticals, Inc. (CORAR) requests clarification of the applicability of part 175 to multi-modal ground carriers and their shippers who offer or transport packages by ground before or after transport by air. If part 175 applies to these entities, CORAR suggests this will subject a significant number of persons within the network of distribution of radiopharmaceuticals to these regulations (e.g. reporting deficiencies and training). CORAR also suggests PHMSA should provide additional time before the effective date of the final rule for the total impact to be assessed and for necessary actions such as training or implementation.

Part 175 currently applies to all persons who accept and prepare shipments for air transportation, including persons who accept packages for air transportation. Ground handling crews, contracted employees, and air freight forwarders that accept packages for air transportation are subject to part 175. As are subsidiary companies formed by aircraft operators to build pallets and handle, load, and unload hazardous materials in air transportation. In this final rule, we are clarifying the applicability of the HMR to air shipments. All functions performed to prepare hazardous materials shipments for air transportation must be performed by a hazmat employee trained in accordance with the HMR, just as was required prior to this rulemaking. We do not feel more time is necessary to allow training to be conducted for hazmat employees currently covered under part 175.

ATA indicates that the proposed applicability statement in § 175.1 is too broad and should be further defined to clarify its non-applicability to employees whose functions are unconnected to air commerce, such as ground delivery personnel of a cargo air carrier who are subject to part 177. ATA suggests adding ''who are engaged in air operations'' to § 175.1(b)(1) to clarify its applicability.

We disagree. In a final rule published on July 28, 2005 (HM–223A (70 FR 43638)), we defined a ''person who offers or offeror'' to mean any person who performs or is responsible for performing any pre-transportation function required by the HMR or who tenders or makes the hazardous material available to a carrier for transportation in commerce. As we said in HM–223A, a carrier is not an offeror when it performs a function as a condition of accepting a hazardous material for transportation in commerce or when it transfers a hazardous material to another carrier for continued transportation without performing a pre-transportation function. We also clarified there may be more than one offeror of a hazardous material or more than one party regulated by the HMR concerning a shipment and each offeror or such party is responsible only for the specific pre-transportation function it performs or is required to perform. In addition, we clarified each offeror or carrier may rely on information provided by a previous offeror or carrier unless the offeror or carrier knows or a responsible person acting in the circumstances and exercising responsible care, would have knowledge indicating the information provided is incorrect.

Currently, some packaging, shipping, and freight forwarding facilities accepting hazardous materials for air transportation appear to believe they are not subject to the requirements in part 175 because they are not air carriers. However, the HMR require each person who offers, accepts, or transports packages by air to comply with all applicable regulatory requirements. Though an air carrier is responsible for compliance with the applicable requirements in part 175, packaging, shipping, and freight forwarding facilities are also subject to the requirements in part 175 when accepting hazardous materials for air transportation.

Therefore, in this final rule we are adopting the proposed provisions to clarify the requirements of the HMR applicable to the transportation of hazardous materials aboard aircraft apply to those persons who offer, accept, or transport hazardous materials in commerce by aircraft to, from, or within the United States. We are relocating § 175.5(a)(1) to § 175.1(b), relocating § 175.5(a)(2) to § 173.7(f), and eliminating § 175.5(a)(3). In addition, we are modifying § 175.1 to clarify part 175 applies to any person who performs, attempts to perform, or is required to perform any function subject to this subchapter, including—

(1) Air carriers, indirect air carriers, and freight forwarders and their flight and non-fight employees, agents, subsidiary and contract personnel (including cargo, passenger and baggage acceptance, handling, loading and unloading personnel); and

(2) Air passengers that carry any hazardous material on their person or in their carry-on or checked baggage are not exempted from the HMR in accordance with § 175.10(a). On February 28, 2003 RSPA clarified the applicability of the HMR to airline passengers (see Notice No. 03–2; 68 FR 9735).

B. Section 175.3 Unacceptable Hazardous Materials Shipments

No amendments were proposed or adopted for this section and no comments were received.

C. Section 175.10 Exceptions

Section 175.10(a)(2) excepts certain hazardous materials required to be aboard an aircraft in accordance with applicable airworthiness requirements and operating instructions from the HMR. However, items of replacement for such materials and other company materials (COMAT) of an airline that are hazardous materials must be properly classed, described, marked, labeled, packaged, handled, stored, and secured in accordance with the HMR. These requirements are discussed in an advisory notice on COMAT published on December 13, 1996 (61 FR 65479). In § 175.10(a)(2) the HMR provide the following limited exceptions for COMAT:

(1) Items of replacement for installed equipment containing hazardous materials are subject to all relevant provisions of the HMR and are only excepted from the packaging requirements of the HMR if they are contained in specialized packaging providing at least an equivalent level of protection to that of the required packaging;

(2) Aircraft batteries are excepted from the quantity limitations in §§ 172.101 and 175.75(a); and

(3) An aircraft tire assembly is not subject to the HMR if it is not inflated

to a gauge pressure exceeding the maximum rated pressure for the tire.

Other hazardous materials such as paint, chemicals for corrosion removal, automotive batteries, wastes, and engine-powered ground equipment containing fuels do not qualify for this limited relief.

Section 175.10 also identifies other hazardous materials which are excepted from the HMR. The materials include: (1) certain personal items of passengers or crew members, such as toiletries, alcoholic beverages, and medicinal items; and (2) certain hazardous materials for special aircraft operations, such as avalanche control flights, aerial applications, and sport parachute jumping. We are reorganizing current exceptions in § 175.10 into three different sections:

(1) § 175.8 covering operator equipment and items of replacement (including COMAT);

(2) § 175.9 covering special aircraft operations (crop-dusting, parachuting, etc.); and

(3) § 175.10 covering exceptions for passengers, crewmembers, and air operators.

In addition, § 175.8 clarifies the exceptions for aircraft spares (COMAT) is applicable only to an operator transporting its own equipment.

Most commenters agree with the proposal to reorganize this section into three separate sections focused on COMAT, emergency response, and passenger related areas, respectively. Some commenters express concern to the exceptions for quantity limits on small arms ammunition, COMAT, batteries in wheelchairs, self-heating hair curlers, and self-defense spray. In addition, commenters requested clarification of the difference between carry-on vs. checked baggage. The comments submitted on those issues and our responses are discussed below.

1. Quantity Limits on Small Arms Ammunition

The NPRM proposed to limit the amount of small arms ammunition allowed in checked baggage to 5 kg per person. Alaska Airlines, Alaska Air Carriers Association (AACA), and Customs and Border Protection, Port of Portland express concern regarding the quantity limits and clarification on ''other packagings'' authorized to carry small arms ammunition. Alaska Airlines and AACA state limiting the amount of small arms ammunition would result in serious economic harm to the tourist industry or hunters who travel to remote areas of the Alaska wilderness to hunt and fish, as well as those persons who live in remote areas who need small arms ammunition for their personal use. They do not support the proposed quantity limits on small arms ammunition. AACA suggests limiting it to 30 kg, a limit consistent with ORM-D packaging. AACA states, ''Many rural Alaskan residents rely on subsistence hunting as part of their lifestyle and to support their diet. They are regular consumers of small arms ammunition but Alaskan villages may typically have only one or two small retail stores with limited amounts of ammunition, and some villages do not have any regular options for purchase of small arms ammunition.'' AACA further states, ''Alaska's tourism industry also relies on air transportation of hunters to remote wilderness areas where there are no options for re-supply of ammunition. Recreational hunters often travel to remote locations for extended trips lasting from 7 to 21 days or more. Such hunters typically carry more than one kind of weapon and their combined ammunition for all weapon types can easily exceed the 5 kg limit.'' Alaska Airlines requests a blanket exemption for carrying these products and states, ''For Alaska to support the proposed rule as written, we must know we will be able to get a blanket exemption permitting our passengers at any of our United States locations to check in baggage the 50 pounds per person they have been doing safely for years (still employing the proven packaging requirements).'' ATA supports the 5 kg (11 pound) limit as proposed for small arms ammunition carried in checked baggage. ATA states ''this limit aligns the HMR with [the International Civil Aviation Organization Technical Instructions (TIs)] and places bounds on the previous ''personal use'' exception. Some carriers that serve hunting destinations may individually wish to seek higher limits through exemptions.''

Though we agree with ATA international harmonization is beneficial, we are compelled to account for the concerns raised by Alaska Airlines and AACA. Therefore, after reevaluating our proposal to limit small arms ammunition to 5 kg (11 pounds), we have decided not to adopt the proposed small arms ammunition limit. In addition, we would like to note that even though we are not adopting this provision, § 171.11 provides air carriers with the option of following the ICAO Technical Instructions which limits the amount of small arms ammunition to 5 kg per passenger.

Customs and Border Protection (CBP) suggests the proposed changes need further clarification as to what constitutes ''other packagings specifically designed to carry small amounts of ammunition.'' According to CBP, many Federal law enforcement officers are experiencing difficulties with inconsistent enforcement of these requirements. According to CBP:

> In the recent past TSA and airline policies on the transport of ''duty'' ammunition by these officers have been inconsistent and non-uniform. TSA Screeners and airlines at one airport would allow an officer to transport his duty ammunition in the firearms magazine or clip (removed from the weapon). Upon the officers return trip from a different airport the local policy would require the ammunition to be transported in the original ''off the shelf'' styrofoam and cardboard box. This causes problems when an officer is suddenly advised he can not fly unless he has original type packaging material. The proposed changes to new § 175.10(a)(8) do not clearly address this situation.

In addition, CBP suggests magazines and clips are designed to safely transport ammunition and to protect the primer end of the round from impacts may result in accidental discharge; according to CBP, store packaging of ammunition in thin cardboard boxes with a styrofoam insert provides no such protection of the primers. CBP states, ''If a magazine or clip is not deemed suitable for transport then specifics on packaging for small amounts of ammunition must be clearly outlined to facilitate a uniform national interpretation of the standards.''

The current requirement to securely package small arms ammunition for personal use in boxes or other packages specifically designed to carry ammunition provides a flexible packaging standard may be met using a variety of different packaging configurations. Similarly, the requirement for clips and magazines to be securely boxed is sufficiently descriptive to provide a variety of safe shipping options for shippers and carriers. Section 173.63 provides similar requirements for ''Cartridges, small arms'' and ''Cartridges, power devices'' shipped as ORM-D materials. Those provisions have an established history of safety and we are confident the adoption of proposed revisions to this paragraph will have similar results. In addition, we recognize the vast majority of persons transporting ammunition aboard an aircraft (i.e., sportsmen, law enforcement officers, military personnel, and competitive shooters) are knowledgeable about ammunition safety. Many will choose to transport and store their ammunition in hardened plastic cases intended to provide protection. Others will choose to transport their ammunition in the manufacture's original packaging, clips, or magazines—all of which can be safely

transported provided they completely and securely enclosure the ammunition (see letter of interpretation dated April 12, 2005 from Mr. John Gale to Mr. Marc Joyeuse). The intention of this change is not to develop a new packaging for ammunition; it is to ensure a limited amount is transported safely, in secure packages that provide adequate protection from the conditions normally incident to transportation aboard an aircraft.

2. COMAT

The NPRM clarified exceptions applicable to COMAT shipments apply only to an airline transporting ''its own'' replacement items. ATA asks PHMSA to delete the proposed change in new § 175.8(b). ATA notes carriers have had reciprocal arrangements where they obtain replacement items from each others' inventories in order to expedite movement of the item to the location where it is needed. ATA states ''it is irrelevant for safety purposes whether ownership of the replacement item has actually passed to the carrier that transports it for use as a replacement.''

We do not agree the exception for COMAT materials should be expanded to include the transportation of replacement parts by one airline for another airline. COMAT consists of spares and supplies intended for the repair or replacement of parts by the air carrier on which it is transported. Parts and supplies transported for other airlines must be transported in accordance with the HMR. To clarify the COMAT exception and the exception for installed equipment, in this final rule, we moved the exception from paragraph (b) of § 175.8 to paragraph (a) and have replaced the proposed text of paragraph (a) with the text currently in § 175.10(a)(1) and (a)(2).

ATA also asks PHMSA to adopt a similar special provision to the proposed Special Provision A59 on tire assemblies for aircraft batteries. ATA suggests this will further align the HMR with ICAO Special Provision A51 for batteries, just as the proposed Special Provision A59 for tire assemblies aligns with ICAO Special Provision A59 for tire assemblies. ATA states ''this change will make it clear that carriers may continue their current practices regarding COMAT shipment of aircraft batteries.'' ATA's comment is beyond the scope of this rulemaking. We will consider the addition of a special provision in a future rulemaking as suggested by ATA.

Regional Airline Association (RAA) requests clarification as to which exceptions apply to ''will not carry'' operators. For example, RAA suggests ''will not carry'' operators should be permitted to carry limited hazardous material COMAT if packaged in a manner acceptable to FAA and provided the operator's training and procedures are acceptable to FAA. RAA suggests air carriers incur a significant cost due to the current hazmat rules for ''will not carry'' operations. RAA also requests clarification of exceptions for passengers and crewmembers on ''will not carry'' airlines.

A ''will not carry'' operator is one who makes a business decision not to carry hazardous materials and indicates this decision in item 23 of its operations manual, in accordance with 14 CFR Subpart G—Manual Requirements (§ 121.135). The FAA does not prohibit ''will not carry operators'' from transporting those materials excepted in § 175.10(a). The HMR does not apply to those materials transported in accordance with § 175.10.

3. Batteries in Wheelchairs

ATA requests revisions to certain aspects of the provisions in part 175 applicable to non-spillable batteries. According to ATA, ''Most wheelchairs that carriers check as baggage or examine in recent years have non-spillable batteries; spillable batteries have become relatively rare. Wheelchair design has changed in ways that make it very difficult for carriers to comply with the existing visual inspection and battery disconnection requirements, which PHMSA proposes to carry over to the new section § 175.10(a)(15).'' Therefore, ATA requested PHMSA modify the proposed § 175.10(a)(15)(ii) and (iii) to recognize the current state of wheelchair technology.

ATA further states:

> Visual inspection and disconnection of a non-spillable battery should not be required if both of the following are satisfied: (1) the wheelchair has a disconnect mechanism, and carrier personnel use that mechanism to disconnect the power source, and (2) carrier personnel are able to verify, without disassembling the chair to view the battery itself, that the battery is non-spillable. If a carrier cannot satisfy either of these requirements, it is appropriate to require visual inspection to determine whether the battery is non-spillable. If the carrier performs a visual inspection and verifies that the battery is non-spillable, the carrier should be permitted to use a disconnect mechanism if the chair has one, or to disconnect the battery if the chair does not have a disconnect mechanism. ATA agrees that spillable batteries pose both an electrical and chemical safety risk, and the current visual inspection and disconnection requirements for them should be maintained.

ATA suggests these modifications will increase convenience for traveling disabled passengers by decreasing the time for carriers to return checked chairs to passengers. In addition, ATA suggests these modifications would decrease the damage to wheelchairs.

ATA's comments are beyond the scope of this rulemaking. However, we will consider the revisions suggested in a future rulemaking.

4. Carry-On vs. Checked Baggage

RAA requests further clarification of the terms ''carry-on baggage'' and ''checked baggage.'' According to RAA, ''there seems to be the implication that carry-on baggage is stowed in the passenger cabin and accessible to persons during flight and that checked baggage is stowed within a cargo hold; that is not the case for regional airplane operations.'' RAA asks PHMSA to clearly define these terms. As RAA states:

> Most ''carry-on'' bags on regional airplanes are stowed in the cargo hold; they are thoroughly checked by TSA as carry-on bags but are brought to the gate by the passengers and then loaded planeside into the cargo holds since there is no room for them in the passenger compartment. Placement of many carry-on bags that are taken to the gate for flights on very large airplanes (e.g. Boeing and Airbus) are also loaded planeside in the airplane's bulk cargo hold because they may not fit in an overhead compartment or there simply isn't enough room in the passenger compartment. We therefore see no distinction then between the two types of bags once they are placed onboard the airplane.

The HMR do not include definitions for ''checked'' or ''carry-on'' baggage. In the absence of a definition in the HMR, a term has the same meaning as in a dictionary or other source. Thus, when the HMR refer to ''checked baggage,'' the term means items of baggage offered to an airline for transportation in the hold of an aircraft inaccessible to the passenger during the flight for which the airline issues a claim check. When the HMR refer to ''carry-on baggage,'' the term means baggage for which no claim check is issued and can be carried into the passenger cabin of an airplane by a passenger or crewmember. These issues have not been addressed by this rulemaking; therefore, they are beyond its scope.

5. Self-heating Hair Curlers

The HMR include an exception for hair curlers containing hydrocarbon gas allowing no more than one hair curler per passenger or crew member, provided the safety cover is securely fitted over the heating element. This section is clarified by including the North American term ''curling iron'' to describe hair curlers and by citing ''butane'' as an example of a

hydrocarbon gas. ATA suggests the self-heating hair curlers referred to in § 175.10(a)(6) should include devices using liquid fuel as well as hydrocarbon gas fuel. We disagree. The current exception permits self-heating hair curlers to be transported in carry-on or checked baggage and includes curling irons using a hydrocarbon gas rather than electricity for power. This exception provides travelers with an option when the use of curlers heated by electricity is not an option. Allowing a flammable liquid burning heating source to be transported in carry-on or checked baggage poses an unnecessary flight safety risk.

6. Self-defense Spray

ATA asks PHMSA to delete the proposed § 175.10(a)(9) allowing the carriage of a self-defense spray in checked bags. According to ATA, this would harmonize the HMR with ICAO and IATA, which provide no exception for self-defense sprays in checked bags.

We recognize the current HMR exception for self-defense spray is not consistent with ICAO and IATA. However, harmonization is not always appropriate. The exception is used frequently by passengers and crewmembers to ensure their safety at destination. We do not agree permitting one container of self-defense spray in checked baggage poses a flight safety risk. Passengers traveling internationally should note that many foreign countries do not allow self-defense spray to be transported in checked or carry-on luggage.

7. Reformatting of Exceptions in § 175.10

Based on the comments received, we are adopting the amendments to divide the current exceptions in § 175.10 into three different sections: §§ 175.8, 175.9, and 175.10. Each section will cover a category of exceptions. Section 175.8 will cover operator equipment and items of replacement (including COMAT); § 175.9 will cover special aircraft operations (crop-dusting, parachuting, etc.); and § 175.10 will cover exceptions for passengers, crewmembers, and air operators. Separating and categorizing these exceptions will make the regulations easier to use and minimize confusion concerning the applicability of certain paragraphs.

New § 175.8 incorporates the exceptions for operators covering:

—Aviation fuel and oil
—Hazardous materials required for airworthiness
—Oxygen supplied by the operator
—Dry ice used by the operator in food service
—Alcohol, perfume, and lighters carried for use or sale by the operator
—Spares (COMAT) for installed equipment
—Tire assemblies.

New § 175.8 also clarifies the exceptions for aircraft spares (COMAT) are applicable only to an operator transporting its own equipment. The paragraph on COMAT deletes the references to tires as this exception already exists in § 173.307(a)(2). Also, current § 175.10(a)(7) dealing with the stowage of oxygen cylinders is moved to the new § 175.501 (See § 175.8(b)(1)).

We are revising § 173.307(a)(2) to reference § 175.8(b)(4) for tires transported by aircraft. Section 175.8(b)(4) deals with serviceable and undamaged tires versus unserviceable and damaged tires. It also requires tires and their valve assemblies to be protected from damage during air transport.

New § 175.9 incorporates exceptions for the following special aircraft operations:

—Aerial seeding, crop dusting, spraying, etc.
—Release devices, lights, and life-jackets for parachuting operations
—Smoke grenades, flares, pyrotechnics, affixed to aircraft during air shows
—Weather control, environmental protection, forest preservation, and avalanche control.

Also added to this new section are exceptions for operations dedicated to firefighting and prevention, air ambulances, and search and rescue operations. We have edited references to FAA approvals throughout this section to reflect either the FAA Flight Standards District Office or the FAA Principal Operations Inspector, whichever is more appropriate. Emergency services not performed under dedicated operations must comply with the HMR. The exceptions in § 175.9 are not for general transportation. In addition, applicable FAA operating specifications and Federal Aviation Requirements apply.

New § 175.10 contains exceptions for hazardous materials carried by passengers and crewmembers. These provisions have been edited for clarification. The most common edit was to put the name of the excepted article at the beginning of the sentence so it is easy to find.

The following table lists the provisions in the current § 175.10(a) and indicates the new location of the provision as adopted in this final rule.

Old paragraph 175.10(a)	New paragraph
(a)(1) aviation fuel and oil in tanks	175.8(a).
(a)(2) operator equipment, spares	175.8(a) and (b), 173.307(a)(2).
(a)(3) aerial seeding, crop dusting, etc.	175.9(a).
(a)(4) medicinal/toilet articles, 2.2 aerosols	175.10(a)(1)—self defense spray (a)(9).
(a)(5) small arms ammunition	175.10(a)(8).
(a)(7) oxygen furnished by operator	175.8(b).
(a)(8) implanted medical devices	175.10(a)(3).
(a)(9) parachuting devices	175.9(b).
(a)(10) safety matches/lighters	175.10(a)(2).
(a)(11) pyrotechnics affixed to aircraft	175.9(c).
(a)(12) hazmat dispensed, environmental	175.9(e).
(a)(13) dry ice	175.10(a)(10), 175.8(d).
(a)(14) transport incubator	175.10(a)(13).
(a)(15) alcohol, etc., carried by operator	175.8(b).
(a)(16) duty free perfume, etc.	175.10(a)(5).
(a)(17) alcoholic beverages	175.10(a)(4).
(a)(18) gas cylinders for mechanical limbs	175.10(a)(12).
(a)(19) wheelchair, nonspillable battery	175.10(a)(16).
(a)(20) wheelchair, spillable battery	175.10(a)(17).
(a)(21) hair curlers, butane	175.10(a)(6).
(a)(22) mercurial barometer/thermometer	175.10(a)(14).
(a)(23) heat-producing articles	175.10(a)(15).

Old paragraph 175.10(a)	New paragraph
(a)(25) lifejacket with gas cartridges	175.10(a)(11).
(a)(26) small mercury thermometer	175.10(a)(7).
(a)(27) lithium batteries and cells	175.10(a)(17).

Section 175.10(a)(1) is edited to change the maximum net quantity of inner packaging for medicinal/toilet articles from 473 ml to 500 ml for consistency with other even metric quantities. Self-defense spray has been reassigned to its own paragraph since it has little in common with medicinal and toilet articles.

Section 175.10(a)(2) has been revised to clarify that safety matches and lighters may be carried on one's person or in carry-on baggage. This change stems from a February 13, 2003 memorandum from Mr. Edward Mazzullo to Mr. William Wilkening addressing the current allowance for safety matches or a lighter to be carried on one's person. The memo clarifies the phrase ''one's person'' to include the passenger and his carry-on baggage.

Section 175.10(a)(6) is clarified by including the North American term ''curling iron'' to describe hair curlers and by citing ''butane'' as an example of a hydrocarbon gas.

Section 175.10(a)(8) is the new location for the small arms ammunition exception. This sub-paragraph is clarified to indicate ammunition clips and magazines must be securely boxed.

Section 175.10(a)(9) is the new location for the self-defense spray exception. It had previously been included in the quantity limits for medicinal and toilet articles. In its previous location the exception was difficult to locate; the move to this subparagraph makes it more visible.

Section 175.10(a)(10) is the new location for the dry ice exception. The exception, currently located in § 175.10(a)(13), includes two different net quantities allowed for dry ice—2 kg (4.4 pounds) and 2.3 kg (5 pounds)—depending on how it is carried. In addition, it is unclear whether the marking requirements are to be applied only to checked baggage or if they must be applied to both dry ice in cargo and checked baggage. The new subparagraph maintains the current quantities by allowing 2.3 kg (5 pounds) to be carried in checked baggage and 2 kg (4.4 pounds) to be carried in carry-on baggage. In addition, the new subparagraph clarifies the marking requirements are for checked baggage only. We had proposed to limit the amount of dry ice in checked and carry-on baggage to 2.0 kg (4.4 pounds); however, due to international changes we decided to maintain the current allowance. The exception for dry ice used in food service by the operator is moved to § 175.8(b)(2). The 2.3 kg (5 pounds) exception for dry ice transported as cargo is now incorporated in § 173.217. However, the maximum amount of dry ice allowed on board a flight is established by airworthiness requirements and operating specifications. FAA's Advisory Circular 91–76 dated September 30, 2004 outlines currently authorized limits.

Section 175.10(a)(11) is modified. Self-inflating life jackets may be carried with two cartridges of CO_2 (or other suitable Division 2.2 gas), as adopted in a final rule issued under docket HM–215E (68 FR 44991; July 31, 2003).

Section 175.10(a)(15) is clarified by replacing the term ''underwater torch'' with the North American term ''diving lamp''.

Section 175.10(a)(17) is replaced. Old § 175.10(a)(27) was adopted in an interim final rule published under Docket HM–224E (69 FR 75207; December 15, 2004). The new section provides an exception for lithium batteries in consumer electronic and medical devices (watches, calculators, cameras, cellular phones, lap-top computers, camcorders, and hearing aids, etc.) containing lithium cells or batteries, and spare lithium batteries and cells for these devices, when carried by passengers or crew members in carry-on or checked baggage for personal use. In addition, each installed or spare battery must conform to the following:

(1) The lithium content of the anode of each cell, when fully charged, is not more than 5 g; and

(2) The aggregate lithium content of the anodes of each battery, when fully charged, is not more than 25 g.

New § 175.10(b) includes the provisions adopted in HM–215E authorizing carriage of these excepted hazardous materials in passenger baggage unintentionally separated from the flight carrying the passenger (misrouted).

D. Section 175.20 Training

Section 175.20 requires aircraft operators to comply with all applicable requirements in Parts 106, 171, 172, and 175. In addition, hazmat employers must ensure all hazmat employees receive training in accordance with Part 172. Initial training under the HMR must be conducted within 90 days after employment begins or a change in the employee's job function. Recurrent training must be conducted at least every three years. Section 175.20 also refers to the FAA's hazardous materials training requirements in 14 CFR 121.401, Part 121 Subpart Z, 135.323, and Part 135 Subpart K (as amended in FR Vol. 70, No. 194; published October 7, 2005). The FAA requirements prescribe additional training for air carriers. Aircraft operators may substitute training provided in accordance with 14 CFR for training required by Part 172 to the extent that the training provided under 14 CFR satisfies requirements in Part 172.

A ''hazmat employee'' is defined in § 171.8 to mean a person ''who in the course of employment performs functions that directly affect hazardous materials transportation safety.'' This does not include every person who works around an area where, for example, hazardous materials are loaded, unloaded, handled, and stored. The employee's functional relationship to hazardous materials transportation safety, rather than incidental contact with hazardous materials in the workplace, is the primary factor in determining whether an individual is a ''hazmat employee.''

We received no comments regarding the proposed revision to this section; therefore, it is adopted as proposed in the NPRM. This final rule thus clarifies the HMR (including training) apply to any person who performs, attempts to perform, or is required to perform any function subject to this subchapter, including air carriers, indirect air carriers and freight forwarders and their flight and non-flight employees, agents, subsidiary and contract personnel that accept hazardous materials for air transportation.

E. Sections 175.25 and 175.26 Notification at Air Passenger and Cargo Facilities of Hazardous Materials Restrictions

The HMR currently require notices to be posted at air passenger facilities and cargo facilities. The notices contain specific language warning offerors of cargo and passengers of the requirements applicable to offering or carrying hazardous materials and the penalties for failure to comply with

those requirements. Section 175.25 requires aircraft operators to display notices warning passengers against carrying hazardous materials aboard aircraft in their checked or carry-on luggage and on their persons, and prescribes the information to be contained in each notice. Section 175.26 requires each person who engages in the acceptance of, or the transportation of, cargo by aircraft, to display notices in prominent locations at each facility where cargo is accepted. Display of notices are not required at unattended locations if there is a general notice prominently displayed advising customers shipments of hazardous materials at the location are prohibited. In addition, notices are not required to be displayed at a shipper's facility where packages of hazardous materials are accepted.

In a final rule published July 10, 1998 (63 FR 37454), we revised §§ 175.25 and 175.26 to reflect changes in the statutory citations and penalties, and to provide carriers greater flexibility. These notices are intended to inform customers of hazardous material identification procedures, the requirement to comply with the HMR, and the penalties for failure to comply with the HMR. Therefore, signs must be in prominent view of passengers and persons who accept or offer cargo. Sections 175.25 and 175.26 also list the minimum information required to be contained on the notice.

In some cases, cargo terminals are co-located with passenger terminals. To make it easier for the industry to comply with signage requirements, FAA and RSPA stated in a final rule published September 27, 1993 (58 FR 50496) display of separate passenger and cargo notices is not required at these passenger terminals.

We did not propose any amendments to the signage requirements in §§ 175.25 and 175.26. However, in an effort to further clarify these requirements and provide consistency with § 175.26, we did propose to revise the terminology in § 175.25 by changing ''each aircraft operator'' to ''each person.''

ATA supports PHMSA's efforts to educate shippers and the public about hazardous materials restrictions. For clarity, ATA suggests revising the opening sentence of § 175.25 to add the word ''air,'' as follows: ''Each person who engages in for-hire air transportation of passengers * * *'' We agree the suggested change provides further clarity and are adopting it in this final rule. We will also continue to work with the airlines and the airports to ensure the passengers and shippers of cargo aboard aircraft are aware of the dangers and the regulations for shipping hazardous materials.

F. Section 175.30 Accepting and Inspecting Shipments

Section 175.30 prohibits any person from carrying a hazardous material aboard an aircraft unless the package is inspected by the aircraft operator to ensure the integrity of the package has not been compromised. In response to a request from an airline to clarify its hazardous material acceptance responsibility, we issued a formal interpretation on the acceptance of hazardous materials on June 4, 1998 (63 FR 30411). We stated a carrier's acceptance and transportation of hazardous materials can involve several different situations. For example, a shipment may be ''declared'' by the shipper to contain hazardous materials by shipping documentation, marking, labeling, or other means. In such cases, the shipment must comply with all applicable HMR requirements, including the use of an authorized packaging. Conversely, an ''undeclared'' or ''hidden'' shipment is a shipment of hazardous materials not declared, intentionally or unintentionally, by the offeror to contain hazardous materials, and there is no attempt to comply with the HMR.

The responsibility to reject any shipment of hazardous materials not fully in full compliance with the HMR stems from the authority in 49 U.S.C. 5123 to assess a civil penalty against any person who ''knowingly violates'' any requirement in the HMR. Section 5123(a) provides a person ''acts knowingly'' when: (A) the person has actual knowledge of the facts giving rise to the violation; or (B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. A carrier knowingly violates the HMR when the carrier accepts or transports a hazardous material with actual or constructive knowledge that a package contains a hazardous material not properly packaged, marked, labeled, or described on a shipping paper as required by the HMR. To ignore readily apparent facts indicating either: (1) A shipment declared to contain a hazardous material is not properly packaged, marked, labeled, placarded, or described on a shipping paper; or (2) a shipment actually contains a hazardous material governed by the HMR despite the fact it may not be properly marked, labeled, placarded, or described on a shipping paper as containing a hazardous material, would not represent reasonable care.

Section 175.30(d) excepts materials classed as ORM–D from the inspection requirements. In the NPRM, we proposed to remove this exception. Materials reclassed as ORM–D should be subject to the inspection requirements of § 175.30(b) and (c) to ensure all packages containing hazardous materials are in proper condition for transportation aboard aircraft.

ATA; UPS; Association of Hazmat Shippers (AHS); and FedEx Express ask PHMSA to leave the exception provided in § 175.30(d) for consumer commodities and not remove it as proposed. ATA states removing the exception would result in inconsistency with the ICAO acceptance procedures in part 7;1.1.1(b) for similar shipments under Packing Instruction 910. ATA suggests PHMSA provided no safety justification for removing the exception, noting the break down and rebuilding a unit load device (ULD) containing ORM–D materials provides more opportunity to damage those packages. In addition, ATA suggests removal of the exception could lead to international consistency and competitive issues where foreign operators will offer their customers expedited processing while U.S. carriers will have to spend more time processing their packages individually. UPS and AHS also comment there is no incident history to justify removal of the exception and the increased handling could lead to greater costs for U.S. operators and increased damages during handling.

We disagree with the commenters and are adopting the proposal to remove the exception in § 175.30(d) for materials classed as ORM–D. Today's transportation environment also warrants inspection of materials reclassed as ORM–D to ensure the safety and security of the hazardous material shipment. Inspection is one of the only means available to ensure packages containing hazardous materials are in proper condition for transportation aboard aircraft. In addition, the change is consistent with international regulations. International regulations do not provide an ORM–D hazard class; therefore, international transportation of ORM–D materials is not permissible.

ATA, UPS, AHS, FedEx Express, and Express.net Airlines, LLC request, for international consistency, PHMSA remove the proposed requirement for an operator to inspect overpacks to determine ''that a statement indicating the inside packages comply with the prescribed specifications appears on the outside of the overpack when specification packagings are

prescribed.'' ATA commented under HM–215G, final rule, ICAO Technical Instructions no longer require such a statement on overpacks. ICAO Technical Instructions require overpacks be marked ''Overpack.'' The commenter stated the proposed inspection requirement under this rule would only create confusion in international shipments.

We agree, the text should be revised to be consistent with the final rule adopted under docket HM–215G (69 FR 76044; December 20, 2004). Therefore, the proposed text is altered to require the operator to ensure the word ''OVERPACK'' appears on the outside of the overpack when specification packages are required. Note, however, the use of a statement indicating the inside packages comply with prescribed specifications is also authorized until October 1, 2007.

Express.net Airlines requests a revision to § 175.30(e)(1)(iii) to explain whether the ''one package'' limitation refers to a one cargo aircraft only package contained with other shipments acceptable on passenger aircraft, or the ''one package'' refers to the limitation only one package (total) may be overpacked.

We believe proposed § 175.30(e)(1)(iii) clearly indicates the operator is excepted from taking steps to establish an overpack does not contain a package bearing the ''CARGO AIRCRAFT ONLY'' label if the overpack contains a single package. The exception refers to a package, not a single package labeled with the ''CARGO AIRCRAFT ONLY'' label. Therefore, we are not altering the proposed language.

G. Section 175.31 Reports of Discrepancies

Section 175.31 requires a person who discovers a discrepancy after acceptance of a package of hazardous materials (as defined by § 175.31(b)) to notify the nearest FAA Civil Aviation Security Field Office (CASFO) by telephone ''as soon as practicable,'' and provide certain information. This requirement permits early investigation and intervention to determine the cause for failure to either properly declare or prepare a hazardous materials shipment. A May 27, 1980, final rule under Docket HM–168 (45 FR 35329), adopted requirements in 49 CFR 175.31 for reporting discrepancies. In the preamble to the final rule, we stated:

> A shipment containing a hazardous material must be offered to the carrier in accordance with the regulations. An offering occurs when (1) the package is presented, (2) the shipping paper is presented, (3) the certification is executed, and (4) the transfer of the package and shipping paper is completed with no further exchange (written or verbal) between the shipper and aircraft operator, as usually evidenced by the departure of the shipper. At this point, it is clear the operator has accepted the shipment and the shipper has removed himself from a final opportunity to take corrective action that would preclude a violation of the HMR relative to transportation of hazardous materials aboard aircraft * * * the requirement which has been adopted [in this final rule] limits required reporting to shipment discrepancies which are discovered [subsequent to] acceptance of the shipment for transportation and limits 'reportable' discrepancies to those discrepancies which are not detectable as a result of proper examination by a person accepting shipment under the acceptance criteria of § 175.30. This notification requirement will facilitate the timely investigation by FAA personnel of shipment discrepancies involving situations where inside containers do not meet prescribed packaging or quantity limitation requirements and where packages or baggage are found to contain hazardous materials after having been offered and accepted as other than hazardous materials.

We proposed the addition of § 175.31(a)(6) to require the address of the shipper or person responsible for the discrepancy, if known, to be reported by the air carrier. Currently, § 175.31(b)(2) requires air operators to notify FAA, in part, when baggage subsequent to its offering and acceptance is found to contain undeclared hazardous materials. When security screeners suspect checked baggage may contain an unauthorized hazardous material, they bring the item to the attention of the air carrier so the air carrier can make a determination if the item is authorized to be in the baggage. If the air carrier determines the item constitutes a discrepancy, it must notify the FAA.

In comments to the NPRM, ALPA expresses its disappointment with no amnesty program being proposed despite broad support for such a program. ALPA states if an amnesty program is considered in the future it should apply to carriers when they discover an undeclared hazardous material and not to shippers. ALPA stated, ''There is a clear difference in culpability between a carrier that fails to discover an undeclared shipment during or after acceptance and the entity that prepares and offers that shipment.''

Though we did not propose an amnesty program under this rulemaking, as the primary agency delegated by the Secretary of Transportation to inspect and enforce the HMR in the air mode the FAA issued Advisory Circular 121–37, VOLUNTARY DISCLOSURE REPORTING PROGRAM—HAZARDOUS MATERIALS, on January 31, 2006. Holders of certificates under 14 CFR parts 119 and 125 and foreign air carriers issued operations specifications under 14 CFR part 129 who accept hazardous material for transport by air may voluntarily disclose to the FAA violations of certain hazardous materials regulations under this voluntary disclosure reporting program. This applies to violations of 49 CFR part 175, which cover certain reporting, training, acceptance, loading, unloading, handling, and stowage requirements. The voluntary disclosure reporting program applies only when the air carrier discovers an apparent violation and notifies the FAA HAZMAT Branch Manager before it learns of the apparent violation.

In its comments, CORAR states proposed notification of any discrepancy without clarification implies simple discrepancies resulting from unintentional human error, such as a missing or illegible TI value on a Class 7 package label, would be subject to reporting. CORAR states, ''[E]xpanding of resources required to make and respond to such a report is not warranted, particularly when the proposed rule also requires that the report include the address of the shipper or person responsible for the discrepancy, if known, by the air carrier.'' CORAR disagrees with the proposal to add the requirement for the address of the shipper or person responsible for the discrepancy, if known, to be supplied by the air carrier. CORAR states, ''It seems obvious that any investigation resulting from the report of a discrepancy will include a review of shipping papers, air bills and package labels that will provide the name of the consignor.'' CORAR further states, ''Any conclusion of fault or root cause should be the responsibility of the investigator and not the reporting party in order to avoid any wrongful allegation or potential shifting of accountability from another party with a vested interest in hazardous materials distribution.''

ATA suggests the volume of items now being removed from baggage has made it very burdensome for carriers to file discrepancy reports under the current § 175.31 procedures. ATA states it strongly opposes the proposal to require the passenger address, if known, suggesting there must be broader and more effective and efficient means of public outreach by FAA than requiring carriers to research and supply thousands of addresses on commonplace items, e.g., lighters, spray starch, oversized cans of hairspray, which FAA might or might not use in

an individual outreach letter. ATA states, ''[R]esearching addresses could add to the already considerable burden of filing a report.'' According to ATA, ''To require carriers to provide addresses, if known, on all reports would only be providing considerable information that the FAA is unlikely to use.'' Additionally, ATA states, ''In the carrier's view, individual outreach would be appropriate only in cases where a passenger was carrying hazardous materials that pose more significant safety risks, such as fireworks.''

We appreciate the points made by CORAR and ATA regarding the proposed requirement to include the address of the person responsible for the discrepancy in the discrepancy report. The address must only be included if it is known by the operator. In this final rule, we are adopting the proposed addition to § 175.31(a)(6) to require the address of the shipper or person responsible for the discrepancy, if known, by the air carrier. Currently, § 175.31(b)(2) requires air operators to notify FAA, in part, when baggage subsequent to its offering and acceptance, is found to contain undeclared hazardous materials. When security screeners suspect checked baggage may contain an unauthorized hazardous material, they bring the item to the attention of the air carrier accepting the baggage so the air carrier can make a determination if the item is authorized to be in the baggage. If the air carrier determines the item constitutes a discrepancy, it must notify the FAA. Since January, 2002, the FAA has received more than 44,000 discrepancy reports from air carriers in accordance with the § 175.31 reporting requirements. FAA and PHMSA have implemented numerous outreach initiatives intended to educate the public about the HMR. For example, PHMSA and FAA have: (a) Issued safety notices in the **Federal Register**; (b) deployed informational kiosks at major airports to alert passengers about the types of items not authorized to be transported in luggage; and (c) conducted over 1,000 outreach presentations each year. Despite these outreach efforts, the number of hazmat discrepancies reported by air carriers from checked baggage continue to grow. Therefore, PHMSA and FAA believe a more targeted outreach and education campaign is necessary. With the advent of universal checked baggage security screening, the FAA has developed an electronic system that prioritizes the discrepancy reports received based on risk. Although many discrepancy reports include address information, most do not. When the passenger's or shipper's address information is included with a discrepancy report involving higher risk hazardous materials such as fireworks, gasoline, propane, etc, a manually prepared Letter of Investigation is generally sent to the alleged violator in an attempt to gain more information. When the relevant address information is included with a discrepancy report involving lesser risk hazardous materials, an outreach notice is generated and mailed to the responsible passenger. Since April 2005, the FAA has mailed over 10,000 of these automated outreach notices to airline passengers. The address of the passenger or shipper thought to be responsible for a reported discrepancy is a crucial element in the successful resolution of these events.

As an interim measure, the FAA has experienced some success obtaining addresses as part of discrepancy reports by using subpoena authority contained in 49 U.S.C. Section 5121 and Part 13 of the Federal Aviation Regulations, 14 CFR part 13. This experience suggests many cases involve air carriers who know the relevant passenger's address information.

CORAR also requests further clarification of the phrase ''as soon as practicable'' for reporting and asks us to establish a timeframe for reporting such as immediate, 24 hour, 30 days, etc. For purposes of § 175.31, the phrase ''as soon as practicable'' means without undue delay. The person is not required to stop what they are doing and contact FAA immediately.

H. Sections 175.33 and 175.35 Shipping Papers and Notification of Pilot-in-Command

In the NPRM, we proposed to consolidate all the requirements related to shipping papers (§ 175.35), their retention for two years after the material is accepted by the initial carrier (§ 175.30(a)(2)), and the notification to pilot-in-command (NOPIC) into one section—§ 175.33, entitled ''Shipping papers and notification of pilot-in-command.''

ATA states § 175.33(b)(1)(i)(ii) requires extraneous and unnecessary information on a NOPIC. ATA asserts there is no safety-related reason for a NOPIC to include information about outer packaging. According to ATA, the requirement was added to shipping certification in the HM–215G final rule, but is not required in a NOPIC under ICAO Technical Instructions 7.4.1.1(e) and (f). ATA states, ''[T]hese elements have grown unintentionally as supplemental shipping paper requirements have been added to both U.S. and international regulations.'' ATA further states, ''Inclusion of details such as the EX number for airbags (but not for other explosives when the detail is marked on a package or shipping papers), State exemptions, or similar information cross-referenced to the shipping papers is irrelevant, and possibly confusing to the flight crew and/or emergency responders.'' ATA suggests these requirements should be discussed with DOT, FAA, National Transportation Safety Board and international authorities as appropriate. FedEx Express states it does not believe it is the intent of PHMSA to require a description of the outer package on the NOPIC which provides no safety benefit and could delay or keep emergency response personnel from reviewing pertinent information.

We did not propose any revision to the requirements related to shipping papers or the preparation and delivery of a NOPIC. Therefore, the comments summarized above are beyond the scope of this rulemaking.

ALPA proposes adding a revision to § 175.33(b) to state, ''allowing adequate time for review'', where the NOPIC is referenced. ALPA states operators or their agents wait until the very last minute before departure to provide flight crews with hazardous materials information contained in the NOPIC. According to ALPA, ''Just prior to departure is not the best time to provide this information to the flight crew. This does not allow the time required to properly examine the NOPIC, determine legality, and, where possible check the proper loading of these commodities.''

We agree with ALPA, operators should provide the NOPIC to the pilot-in-command early enough to allow adequate time for review. However, we believe the current wording, which requires the NOPIC to be provided to the pilot-in-command as early as practicable, is adequate. Therefore, we are not adding the statement ''allowing adequate time for review'' to § 175.33(b).

I. Section 175.40 Keeping and Replacement of Labels

This section requires aircraft operators to maintain an adequate supply of labels in case a label becomes lost or destroyed. Consistent with the removal of this section from the other modal parts of the HMR, we proposed the removal of this section. Commenters who addressed this section support its removal. Therefore, in this final rule, we are removing the requirement as we proposed.

J. Sections 175.75 and 175.85 Quantity Limitations and Cargo Location

Sections 175.75 and 175.85 prescribe limitations on the quantity of hazardous materials authorized to be carried aboard passenger-carrying or cargo-only aircraft, and the location of those materials, respectively. The quantity limitations for hazardous materials permitted aboard passenger-carrying aircraft are specified in § 175.75(a)(2). This section states no more than 25 kg of hazardous materials and, in addition, 75 kg net weight of Division 2.2 (non-flammable compressed gas) may be carried aboard a passenger-carrying or cargo-only aircraft:

(1) In an accessible cargo compartment;

(2) In any freight container within an accessible cargo compartment; or

(3) In any accessible cargo compartment of a cargo-only aircraft if the hazardous materials are loaded as to be inaccessible unless in a freight container.

Class 9 materials and consumer commodities are excepted from the quantity limitations of § 175.75(a)(2). Section 175.85(b) requires hazardous materials packages acceptable for cargo-aircraft only to be loaded in a manner allowing access to the package by crew members.

Section 175.85(a) prohibits the carriage of a hazardous material in the passenger cabin or on the flight deck of any aircraft, and specifies conditions under which hazardous materials may be carried on main-deck cargo compartments. Section 175.85(c)(1)(i) through (v) provides exceptions for cargo-only operations from the quantity limitations of § 175.75(a)(2), and accessibility requirements of § 175.85(b) for those hazardous materials listed. Section 175.85(c)(2) provides exceptions, when other means of transportation are impracticable, to the accessibility requirement of § 175.85(b) and the quantity limitation requirements of § 175.75(a)(2) for hazardous materials acceptable by both cargo-only and passenger-carrying aircraft. These exceptions require packages to be carried in accordance with procedures approved in writing by the nearest FAA Civil Aviation Security Field Office (CASFO). Columns 9A and 9B of the § 172.101 Hazardous Materials Table (HMT) specify limitations on individual package quantities, or list packages forbidden from transportation by aircraft. Section 173.27 specifies inner receptacle limits for combination packages.

Sections 175.85(c)(3)(i) through (iii) provide exceptions for small, single-pilot cargo-only aircraft from the accessibility requirements of § 175.85(b) and the quantity limits of § 175.75. These exceptions apply when small aircraft are the only means of transporting hazardous materials to a particular destination. This applies to airports and locations incapable of supporting larger aircraft operations, where the only means of access is by smaller aircraft. The provisions of § 175.85(c)(3) do not require approval by the FAA.

To make these requirements easier to understand, in the NPRM we proposed to merge the requirements of §§ 175.75 and 175.85 into one section and remove any unnecessary paragraphs. We also proposed to eliminate the 25 kg cargo compartment restriction from cargo aircraft. We did not propose to increase or eliminate the limitation on the amount of hazardous materials authorized to be transported in an inaccessible cargo compartment of a passenger aircraft. We also proposed to eliminate from the exception in § 175.85(c)(3) the requirement indicating shipment by other means of transportation is impractical. We did not propose to eliminate or modify the exception from the 25 kilogram limitation currently afforded Class 9 and ORM-D materials. In an effort to enhance compliance and further clarify the cargo loading requirements, we proposed to add a chart at the end of § 175.75 to summarize these requirements.

ALPA does not support the proposal to eliminate the 25 kg cargo compartment restriction provision from all cargo operations or cargo-only aircraft. ALPA asserts the greatest danger to an aircraft in-flight from hazardous materials is fire, and, according to ALPA, the quantity limitations and accessibility provisions reduce the potential danger. ALPA states, ''Increasing the quantities of hazardous materials that are inaccessible in cargo compartments without an active fire suppression system is not sound management of the safety risk.'' In addition, ALPA did not support the proposal to eliminate DOT E–11110 and incorporating it into the HMR. This exemption authorizes the transportation of certain hazardous materials in an inaccessible location aboard a cargo aircraft in quantities exceeding those authorized by § 175.75(a)(2). According to ALPA, the proposal is not warranted, and believed this change could significantly increase the potential for fire aboard an aircraft by avoiding these accessibility requirements.

UPS supports the proposal to eliminate the 25 kg quantity limits, stating it recognizes safety margins represented by quantity limits and packaging requirements are applicable to shipments eligible for transportation on passenger aircraft. According to UPS, ''We note that outside the U.S., the lack of any requirements similar to the current § 175.75 gives PHMSA a sound safety justification for its proposed amendment to this section.'' UPS also states, ''We foresee a simplification of training for employees, as a result of this proposal. This benefit is important, because we believe- and have believed for many years-that the effort expended on training loaders to comply with the current requirements of § 175.75 can result in confusion among some employees.'' UPS also supports incorporation of the provisions of DOT-E 11110 into the HMR which authorizes the transportation of certain hazardous materials in an inaccessible location aboard a cargo aircraft in quantities exceeding those authorized by §175.75(a)(2) as a reduction in an administrative burden for both PHMSA and UPS.''

ATA supports the proposal to merge §§ 175.75 and 175.85, and eliminate the 25/75 kg cargo compartment restriction for cargo aircraft and the requirement for shipping by other means be impractical. However, ATA states PHMSA should also remove the current quantity restriction applicable to passenger aircraft and align the HMR with the ICAO Technical Instructions. In addition, the Association of HazMat Shippers (AHS) indicates it strongly supports removal of the cargo compartment restrictions for materials authorized aboard passenger aircraft when carried on cargo aircraft.

RAA suggests the proposal in § 175.75(a) is not appropriate for small cabin airplanes. For that reason, RAA asks PHMSA to remove the proposal from this section.

To make these requirements easier to understand, we are adopting our proposal to merge the requirements of (§ 175.75 and 175.85 into one section and remove any unnecessary paragraphs. However, based on comments received and further consultation, we are not adopting our proposal to eliminate the 25 kg cargo compartment restriction from cargo aircraft. We agree, such a restriction is necessary for the safety of cargo aircraft transporting hazardous materials and inaccessible passenger aircraft quantities of hazardous materials on cargo-only aircraft operations would unnecessarily compound the situation faced by the crew in an unrelated fire.

Therefore, we are not adopting any proposal to modify the limitation on the amount of hazardous materials authorized to be transported in an inaccessible cargo compartment of a cargo aircraft.

In this final rule, we are revising the provisions to clarify the quantity limitations to promote compliance and understanding. Thus, we are adopting our proposal to add a chart at the end of § 175.75 to summarize these requirements and clarify the language. We are also adopting our proposal to eliminate from the exception in § 175.85(c)(3) the requirement for shipment by other means of transportation be impractical.

The following table lists the existing paragraphs in (§ 175.75 and 175.85 and indicates where we are moving them:

Old section and paragraph	New section and paragraph
175.75(a)(1)	Removed as unnecessary.
175.75(a)(2)	175.75(b).
175.75(a)(3)	175.700.
175.75(b)	175.75(b) and (c).
175.85(a)	175.75(a).
175.85(b)	175.75(d).
175.85(c)(1)	175.75(d)(1).
175.85(c)(2)	175.75(d)(2).
175.85(c)(3)	175.75(d)(3).
175.85(d)	Removed as unnecessary.
175.85(e)	175.75(a).
175.85(f)	175.310.
175.85(g)	Removed as unnecessary.
175.85(h)	175.501.
175.85(i)	175.501.
175.85(j)	175.75(a).

K. Section 175.78 Stowage Compatibility of Cargo

For stowage of hazardous materials on an aircraft, in a cargo facility, or in any other area at an airport designated for the stowage of hazardous materials, packages containing hazardous materials with the potential to react dangerously with one another may not be placed next to each other in a position allowing a dangerous interaction in the event of leakage. At a minimum, segregation instructions prescribed in the segregation table in § 175.78 must be followed to maintain acceptable segregation between packages containing hazardous materials with different hazards.

ALPA states PHMSA should address the loading compatibility and associated potential hazards of Class 8 corrosives in this rulemaking. ALPA states these materials present a unique risk to be addressed. According to ALPA, ''Strong acids and strong bases should be segregated onboard aircraft. While we recognize this issue would require substantial regulatory changes regarding hazard classification and hazard communication, we feel the relative danger of an interaction not the difficulty of regulatory change, should be the determining factor in whether these substances are segregated.''

We did not propose to make this change in the NPRM. Therefore, the request is beyond the scope of this regulatory action. We may consider segregation of strong acids and strong bases onboard aircraft in a future rulemaking.

L. Sections 175.79, 175.81, and 175.88 Inspection, Orientation and Securing of Packages of Hazardous Materials

In the NPRM, we proposed to merge the requirements of §§ 175.79 (Orientation of cargo); 175.81 (Securing of packages containing hazardous materials); and 175.88 (Inspection of unit load devices) into a single section—§ 175.88, entitled ''Inspection, orientation, and securing of packages of hazardous materials.''

We received no comments on this proposal. Therefore, we are adopting our proposal to merge the requirements of (§ 175.79 (Orientation of cargo); 175.81 (Securing of packages containing hazardous materials); and 175.88 (Inspection of unit load devices) into § 175.88.

M. Section 175.90 Damaged Shipments

We proposed no amendments for this section.

N. Section 175.305 Self Propelled Vehicles

We proposed to move the requirements of this section to § 173.220. We received no comments on this proposal. Therefore, we are adopting our proposal to move the requirements of this section to § 173.220.

O. Sections 175.310 and 175.320 Transportation of Flammable Liquid Fuel Within Alaska or Into Other Remote Locations and Cargo Aircraft, Only Means of Transportation

Section 175.310, ''Transportation of flammable liquid fuel within Alaska or into other remote locations,'' provides exceptions for the shipment of flammable liquid fuels in the State of Alaska and other remote locations. Section 175.320 provides an exception from the quantity limitations in §§ 175.75 and 172.101, when certain conditions are met. Section 175.320 authorizes the transportation of certain hazardous materials by cargo-only aircraft in inaccessible cargo locations when other means of transportation are impracticable. The term impracticable means transportation is not physically possible or cannot be performed by routine and frequent means of other transportation, due to extenuating circumstances.

In the NPRM, we proposed to merge the passenger-carrying aircraft operations of current § 175.310 and the cargo aircraft operations of the current § 175.320 into one section. However, similar loading and operating requirements were broken out of each and combined into paragraphs that will apply to both types of operations. This resulted in some additional operator requirements for the passenger aircraft operations (the 14 CFR references to operating manuals and FAA approval) which do not exist in current § 175.310. However, these requirements have applied to the operator via 14 CFR even though they were not specifically mentioned in the HMR.

We proposed to remove the authorization to transport Class 1 (explosive) materials in accordance with § 175.320. In our view, because of security concerns and requirements, the carriage of explosives outside the normal requirements of the HMR should be handled by special permit. Alaska Air Carriers Association states the provision for Class 1 materials supports a variety of interests in Alaska including construction and mining, communities staging fireworks displays, and individuals in remote cabin parcels. AACA opposes the proposal eliminating the provision for Class 1 explosives because it did not consider the transportation of Class 1 materials within the United States where air is the only means of transportation; AACA suggests the provisions of § 175.320 be re-instated. In addition, Northern Air Cargo also expressed concern regarding the proposal to eliminate the provisions for Class 1 materials, stating, ''Limiting shipments of explosives and requiring that an exemption for transport be requested with a minimum of 120 days lead time is unreasonable.'' It further states mining, construction and military operations and projects in inaccessible Alaskan locations by road or water make it difficult to give the kind of advance notice required to obtain an exemption. Northern Air Cargo asks PHMSA to continue the current Class 1 provisions.

In this final rule, we are adopting our proposal to remove the authorization to transport Class 1 (explosive) materials in accordance with § 175.320 due to security reasons and in accordance with a February 10, 2004 final rule published under Docket HM–232C (69 FR 6195). In

our view, because of security concerns and requirements, the carriage of explosives outside of the normal requirements of the HMR should be handled by special permit. The removal of the authorization to transport Class 1 materials also allows the deletion of some of the operator restrictions dealing with advance notices, airports, loading areas, etc. under the provisions.

We are also adopting our proposal to remove the reference to flammable liquids mentioned by name and proposing a new combined section limited to fuels, similar to existing § 175.310. Oil, toluene, and methyl alcohol would no longer be covered under this section unless they are being used as a fuel. We are adopting our proposal to remove the chart since there is only one commodity being covered (combustible liquids are mentioned in the paragraph covering bulk tanks). Fuels will be limited to those in Packing Group II or III (Packing Group I fuels, which have a boiling point of 35C/95F or higher, would be allowed only in aircraft tanks designed to hold such liquids).

P. Section 175.501 Special Requirements for Oxidizers and Compressed Oxygen

In the NPRM, we proposed to move the stowage requirements applicable to the transportation of compressed oxygen currently found in §§ 175.10(a)(7), and 175.85(h) and (i), to a new section—§ 175.501, entitled ''Special requirements for oxidizers and compressed oxygen.''

We received no comments on this proposal. Therefore, we are adopting our proposal to move the stowage requirements applicable to the transportation of compressed oxygen currently found in §§ 175.10(a)(7), and 175.85(h) and (i), to § 175.501.

Q. Section 175.630 Special requirements for Division 6.1 and Division 6.2 Material

No amendments were proposed or adopted in this section. However, two comments were received regarding this section from RAA and ATA. Both are beyond the scope of this rulemaking.

R. Sections 175.700, 175.701, 175.702, 175.703, 175.704, 175.705 and 175.706 Transportation of Radioactive Materials Aboard Aircraft

Sections 175.700, 175.701, 175.702, 175.703, 175.704, 175.705, and 175.706 of part 175 contain numerous provisions related to the transportation of radioactive materials aboard aircraft. In the NPRM, we attempted to rewrite many of these provisions to facilitate understanding of these requirements. We proposed to move requirements related to the carriage of radioactive materials with undeveloped film from these sections. However, except in the case of shipments with undeveloped film and separation distances for cargo aircraft, it was not our intent to make any substantive revisions to §§ 175.700, 175.701, 175.702, 175.703, 175.704, or 175.705. With regard to the separation distances from undeveloped film, we proposed to remove them from the HMR. It is our belief such requirements should not be part of Federal regulations, but instead should be addressed by an agreement between the shipper and the airline. We also proposed to adopt the separation distances in the ICAO Technical Instructions for shipments aboard cargo aircraft of greater than 50 TI. The following table identifies the existing requirements and where we proposed to move them:

Existing requirement	Proposed new section
175.75(a)(3)	175.700(b).
175.700(a)	175.700(b) and (c).
175.700(b)	175.705(b) and (c).
175.700(c)	175.700(a).
175.700(d)	175.700(a).
175.701(a)	Removed, unnecessary.
175.701(b)(1)	175.701(c).
175.701(b)(2)	175.701(a).
175.701(b)(3)	175.701(b).
175.701(c)	175.701(d).
175.702(a)	175.702(b).
175.702(b) and (b)(1)	175.702(a).
175.702(b)(2)(i)	175.702(a).
175.702(b)(2)(ii)	175.702(b).
175.702(b)(2)(iii)	175.702(c).
175.702(b)(2)(iv)	175.700(b)(2).
175.703(a)	175.706.
175.703(b)	175.703(a).
175.703(c)	175.703(b).
175.703(d)	175.700(a).
175.703(e)	Removed, already covered by § 173.441.
175.704	Only editorial changes made to this section.
175.705(a)	175.705(a).
175.705(b)	175.705(a).
175.706	175.703(a).

The Federal hazardous materials transportation law addresses ionizing radiation material transportation. (49 U.S.C. 5114.) It states the material may be transported on a passenger-carrying aircraft in air commerce only if the material is intended for use in, or incident to, research or medical diagnosis or treatment; and does not present an unreasonable hazard to health and safety when being prepared for, and during transportation. Section 175.700 prohibits, in addition to other requirements, a person from carrying in a passenger-carrying aircraft any package required to be labeled in accordance with § 172.403 with a RADIOACTIVE YELLOW II or III label, unless certain provisions are met. In addition, § 175.700(c) states (except for limited quantities) no person shall carry any class 7 material aboard a passenger-carrying aircraft unless the material is intended for use in research, medical diagnosis, or treatment.

It appears some persons have misused the definition of ''research'' to avoid the restrictions in § 175.700. We do not consider research to include the application of existing technology to industrial endeavors. For example, the use of radioactive material (e.g., iridium-192) to detect cracks in oil field pipelines is not research, but the application of existing scientific knowledge. Therefore, we are adopting our proposal to revise the definition of research in § 171.8 to clearly indicate it does not include the application of existing technology to industrial endeavors.

FedEx Express strongly supports the harmonization of the radioactive material separation distance requirements in §§ 175.701 and 702 with the IAEA Regulations for the Safe Transport of Radioactive Material, 1996 Edition (Revised) no. TS–R–1 and the ICAO Technical Instruction for the Safe Transport of Dangerous Goods by Air. These are practical changes, which will facilitate the air transport of radioactive material and enhance radiation safety.

FedEx Express and CORAR support the adoption of the ICAO separation distances for radioactive material in quantities exceeding a total transport index of 50. They also support the allowance in § 175.700(b)(2) for a combined transport index of up to 200. According to CORAR, ''This adoption by regulations of conditional relief currently provided by carrier exemption is a good example of practical rulemaking that facilitates compliance and streamlines the efforts to transport time-sensitive materials without compromising public or occupational health and safety.''

CORAR suggests changes to current limits on fissile material packages, as follows:

(1) In § 175.700(c)(1), there is no reason to limit a single fissile material package to a CSI no greater than 3.0. The fissile material package will have both a TSI and a CSI. The TSI will still be limited to not greater than 3.0, thereby limiting the external radiation exposure and will satisfy the congressional mandate on which that regulation is based.

(2) In § 175.700(c)(2), there is no reason to limit a single fissile material package to 10 CSI. Note that existing regulations limit a single fissile material package to no more than 50 CSI.

(3) In § 175.702(b), the reference to transport index should be eliminated. The separation distance for external radiation levels are governed by the table in § 175.700(c)(2).

We agree with CORAR's suggestions and have corrected the language in this final rule accordingly.

CORAR supports the proposed removal of separation distance requirements for undeveloped film in § 175.703 and agrees arrangements to prevent exposure should be made between shippers and carries and not mandated by regulation. However, Eastman Kodak does not support the proposal to remove the paragraph affecting the segregation of undeveloped film and radioactive sources aboard aircraft. Eastman Kodak suggests this provision provides a redundant and necessary assurance that undeveloped film products will not be compromised due to the proximity of certain radioactive sources during transportation. Kodak states, ''Film customers, ranging from members of the general public to the diagnostic, radiography and defense industries, rely on being able to capture unique and/or transient images. In many cases, these images cannot be recaptured, thus the consequences for the medical and defense sectors can be very significant.'' Kodak further states, ''Failure to have such requirements in place could result in damaged product and lead to increased cost and loss of critical information such as medical x-ray and aerial reconnaissance images.'' For this reason, Kodak recommends the elimination of the proposal to remove this provision and retention of the segregation provision.

We agree with Eastman Kodak's viewpoints regarding the need to protect the film, especially in medical and defense related reconnaissance images. Also, we understand our regulations establish the only requirements for the protective separation distances between film and radioactive materials. As stated above, it is our belief separation distances for film should be established and maintained through an agreement between the airline and the shipper and should not be part of HMR. However, we have decided to continue regulating the separation distances between radioactive materials and film by not adopting the proposal to remove the separation provision in § 175.703(a), and we are moving these requirements to new § 175.706.

Express.Net Airlines, LCC asks PHMSA to add a definition of ''routinely'' or delete the section altogether (175.705(d)). According to Express.Net, ''If the intent of this section is to address the dangers of cumulative exposure to radioactive material, carriers, using multiple aircraft and rotating crewmember assignments will minimize exposure compared to an air carrier with limited equipment or personnel.'' Because we did not propose to remove this term or section from the HMR, this comment is beyond the scope of this rulemaking.

III. Miscellaneous Proposals to the HMR

A. Quantity Limits in Column (9) of the Hazardous Materials Table (HMT)

Columns 9A and 9B of the § 172.101 Hazardous Materials Table (HMT) specify limitations on individual package quantities, or list packages forbidden from transportation by aircraft. Section 173.27 specifies inner receptacle limits for combination packages. In an effort to enhance compliance, we proposed to amend the heading for column 9 of the HMT to reference §§ 173.27 and 175.75 as a reminder to comply with both section requirements for quantity limitations for transportation by aircraft.

No comments were received on this proposal. We are adopting our proposal to amend the heading for column 9 of the HMT to reference §§ 173.27 and 175.75 as a reminder to comply with both section requirements for quantity limitations for transportation by aircraft.

B. Tire Assemblies

In the NPRM, we proposed to move the exception for tire assemblies from § 175.8 to Special Provisions A59 in § 172.102(c)(2).

RAA does not agree moving this exception to Part 172 will facilitate awareness and consistency within air transportation and suggests it should remain in § 175.8. RAA asserts operators will have interpretation problems with inspectors over what constitutes ''protection from damage during transport'' for a tire and suggests a number of other problems concerning securement of tires in a cargo hold and the transportation of damaged tires. RAA recommends a requirement for a damaged tire to be deflated so its pressure is below 25 psig, which is the HMR definition for a Division 2.2 compressed gas.

In accordance with RAA's comments, we are not adopting the proposed addition of tire assembly requirements to Special Provision A59. We agree placing the requirement in § 175.8 will facilitate awareness and consistency in air transportation. Therefore, we are adding the requirements for tire assemblies proposed in Special Provision A59 to § 175.8(b)(4) and adding a reference to § 173.307(a)(2). We also agree the exception for tire assemblies should be tied to the definition of Division 2.2 gas. We have revised § 175.8(b)(4) accordingly.

C. Small Quantities, Limited Quantities and Consumer Commodities

The HMR contain exceptions for small quantities, limited quantities, and consumer commodities. These exceptions allow materials to be transported at reduced levels of regulation. Small quantities of hazardous materials are excepted from all other requirements of the HMR, provided certain criteria in § 173.4 are met. Limited quantity exceptions in the HMR are based on the class of the hazardous material, and include more stringent requirements for air transportation. Materials meeting the limited quantity exception and also meet the definition of a consumer commodity as provided by § 171.8, may be renamed ''Consumer Commodity'' and reclassed as ORM–D. Consumer commodities are excepted from specification packaging, labeling, placarding and quantity limitations applicable to air transportation. As currently written, these exceptions allow small quantities and consumer commodities to be transported by aircraft even though they may contain hazardous materials otherwise forbidden aboard aircraft. These exceptions are inconsistent with the ICAO Technical Instructions, which require before a hazardous material may be transported as an excepted quantity (i.e., small quantity or a limited quantity), it must be suitable for transportation aboard passenger aircraft. The ICAO Technical Instructions also prohibit the transportation of small quantities in checked and carry-on luggage.

In the NPRM, we proposed to eliminate a provision of the HMR allowing the transportation of hazardous materials forbidden aboard aircraft to be transported aboard aircraft as either ORM–D material or small quantity material. In addition, we proposed for transportation by aircraft only, to adopt the ICAO Technical Instructions provision that requires shipments of limited quantities to comply with the passenger aircraft net quantity limitation in the HMT. We proposed to amend all the limited quantity sections of the HMR (e.g., § 173.150) by stating,

for transportation by aircraft, only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, we proposed to amend § 173.4 (small quantities) to limit those small quantity materials authorized for transportation aboard aircraft to those materials allowed aboard passenger-carrying aircraft. We also proposed, consistent with the ICAO Technical Instructions, to forbid the transportation of small quantities of hazardous materials in carry-on or checked baggage.

Anderson Products, Inc. opposes the proposed amendment to § 173.4 limiting the hazardous materials eligible for transport by aircraft under the small quantity except to those authorized aboard passenger aircraft. Anderson Products manufacturers and ships medical sterilization devices worldwide and suggests this revision as proposed would impose an undue economic burden on its shipments. Anderson Products also notes the ICAO Technical Instructions currently provide an exception under special provision A131 to permit ethylene oxide sterilization devices to be transported under the excepted quantities provision in 1;2.4 of the ICAO Technical Instructions in quantities containing less than 30 mL per inner packaging.

Anderson Products suggests ''in the interest of full consistency with the ICAO Technical Instructions—which was apparently PHMSA's objective in proposing the new § 173.4(a)(9)(i)—if the proposed new paragraph is to be adopted a similar exception should be provided in the HMR for ethylene oxide sterilization devices.'' In addition, Anderson Products ''questions the need to include the proposed new 173.4(a)(9)(i) at all.'' According to Anderson Products, ''[T]here is no evidence to support that the more restrictive provisions adopted by ICAO which are now being proposed for incorporation into the HMR in the interests of ''consistency'' with ICAO, were necessary to ensure safety in air transport.''

We agree with Anderson Products comments regarding the need for consistency with ICAO in this case and the need for an exception for ethylene oxide sterilization devices. Therefore, we are adopting the exception in Special Provision A131 of the ICAO Technical Instructions for ethylene oxide sterilization devices under a new Special Provision (A59) in 172.102. In addition, we are adopting Special Provision A75 of the ICAO Technical Instructions to provide a similar exception for hydrogen peroxide sterilization devices under a new Special Provision (A60) in 172.101.

In this final rule, we are adopting our proposal to eliminate a provision of the HMR which inadvertently allows the transportation of hazardous materials forbidden aboard aircraft to be transported aboard aircraft as either a consumer commodity or small quantity material. In addition, we are adopting our proposal to amend all of the limited quantity sections of the HMR (e.g., § 173.150) by stating, for transportation by aircraft, only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. We are adopting our proposal to amend § 173.4 (small quantities) to limit those small quantity materials authorized to be transported aboard aircraft to those allowed aboard passenger-carrying aircraft. However, we have decided to add new paragraph (a)(11) to § 173.4 in place of redesignating paragraphs (a)(9) and (a)(10) as (a)(10) and (a)(11), respectively, and then adding new paragraph (a)(9). Adding one new paragraph to § 173.4 is far less disruptive and much easier to follow than redesignating two paragraphs and adding a new paragraph. Except as noted above, we are also adopting our proposal, consistent with the ICAO Technical Instructions, to forbid the transportation of small quantities of hazardous materials in carry-on or checked baggage.

The ICAO Technical Instructions provision to require shipments of limited quantities to comply with the passenger aircraft net quantity limitation in the HMT we proposed, was in error. The provision in ICAO is not consistent with the HMT net quantity limitation for passenger aircraft. Therefore, we are unable to adopt the provision as proposed and will not be making a change to the quantity limits for limited quantities.

D. Section 173.7

In the NPRM, we proposed to move the exception currently in § 175.5(a)(2), related to an aircraft under the exclusive direction and control of a government, to § 173.7. We also proposed to modify the exception by making it an exception from the ''subchapter'' and not solely an exception from part 175.

No comments were received on these proposals. Therefore, we are adopting these amendments as proposed.

E. Section 173.217

In the NPRM, in the proposed revision of § 175.10, we proposed to maintain the exception for dry ice in checked and carry-on baggage and move the exception for dry ice in airline food service to § 175.8(b)(2). We proposed to relocate the exception for 2.3 kg (5 pounds) of dry ice as cargo/freight to § 173.217.

We received no comments on this issue. Therefore, we are adopting the changes as proposed in the NPRM. In the revision of § 175.10, we will maintain the exception for dry ice in checked and carry-on baggage and § 175.8 will contain the exception for dry ice used in airline food service. To retain the 2.3 kg (5.0 pounds) exception for the shipment of dry ice as cargo/freight, we are adopting our proposal to move this exception from § 175.10 to a new paragraph (f) in § 173.217.

F. Section 173.220

The proposed revision would move the requirements for self-propelled vehicles from § 175.305 to paragraph (b)(4)(iii) of this section. No comments were received on the proposed revision. Therefore, in this final rule we are moving the requirements for self-propelled vehicles from § 175.305 to paragraph (b)(4)(iii).

IV. Rulemaking Analysis and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 et seq.) and 49 U.S.C. 44701. Section 5103(b) of the Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. Title 49 United States Code § 44701 authorizes the Administrator of the Federal Aviation Administration to promote safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. Under 49 U.S.C. 40113, the Secretary of Transportation has the same authority to regulate the transportation of hazardous material by air, in carrying out § 44701, that he has under 49 U.S.C. 5103.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not considered a significant rule under the Regulatory Policies and

Procedures of the Department of Transportation [44 FR 11034].

The changes resulting from this final rule have minimal cost implications that will be more than offset by the benefits. For example, the costs of altering the small quantity and limited quantity requirements so they allow only those materials authorized for transportation on passenger-carrying aircraft and the costs of including a new requirement in § 175.3 for ORM–D materials to be inspected before they are placed aboard an aircraft are offset by eliminating the unacceptable risk to passengers and crew that existed prior to this final rule. A change with a minimal impact on the cost to carriers is the requirement to include the address of the shipper, if known, in the discrepancy report required by § 175.31. However, the cost resulting from this new discrepancy report requirement will be offset by the benefits provided elsewhere in this final rule.

In addition to the costs and benefits provided above, this final rule will provide several other benefits to help offset the costs. The majority of this rulemaking address clarification of requirements applicable to the transport of hazardous materials aboard aircraft. By focusing on clarity this final rule will enable shippers, carriers, and enforcement officers to gain a better understanding of the regulations. The changes we have adopted in this final rule will clarify the aircraft requirements, which, will promote compliance and enforcement in order to increase safety. Other increases in transportation safety are realized by harmonizing the domestic and international regulations where applicable. Harmonization will also provide for continued access to foreign markets by domestic shippers of hazardous materials. In addition, carriers will realize a cost savings from the elimination of the requirement for carriers to maintain replacement labels to be used in the event that a hazmat label becomes lost or damaged.

The majority of amendments in this final rule result in cost savings and several ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses subject areas 2, 3, and 4 above. This final rule preempts any state, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' as the Federal requirements. This final rule is necessary to update and clarify the hazardous materials transportation requirements by aircraft which will enhance future compliance.

Federal hazardous materials transportation law provides at § 5125(b)(2), if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA proposes the effective date of Federal preemption will be 90 days from publication of a final rule in this matter in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities. The provisions of this final rule apply to aircraft operators. The Small Business Administration criterion specifies an aircraft operator/carrier is ''small'' if it has 1,500 or fewer employees. For this rule, small entities are part 121 and part 135 aircraft operators/carriers approved to carry hazardous materials, with 1,500 or fewer employees. We identified 729 aircraft operators/carriers meeting this standard. Provided we are only reorganizing the current requirements for the transportation of hazardous materials aboard aircraft and adopting provisions promoting cost savings, we anticipate a cost savings for the airline industry as a result of this final rule. While maintaining safety, this final rule relaxes certain requirements applicable to aircraft operators and would clarify existing provisions. Therefore, PHMSA certifies this final rule does not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

This final rule does not impose any new information collection burden. Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests.

We currently have approved information collections under OMB No. 2137–0034, ''Hazardous Materials Shipping Papers and Emergency Response Information'' which expires May 31, 2008, and OMB No. 2137–0557, ''Approvals for Hazardous Materials'' which expires March 31, 2008. This rule identifies only editorial revisions proposed as section designation changes, to these approved information collections. PHMSA submitted the revised information collection requests for editorial revisions as proposed changes in section designations to OMB for approval based on the requirements as proposed in this rule. OMB has approved both information collection requests submitted in association with this rulemaking and has extended these information collections until 2008.

PHMSA specifically requested comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this rule. No comments were received regarding approved editorial changes to this information collection.

Requests for a copy of the information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–10), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

Under the Paperwork Reduction Act of 1995, no person is required to respond to or comply with an information collection requirement unless it displays a valid OMB control number.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda. The RIN number for this final rule is—RIN 2137–AD18.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this final rule. PHMSA proposed and is adopting in this final rule changes to the requirements in the HMR on the transportation of hazardous materials by aircraft. The purpose of this rulemaking is to modify or clarify requirements to promote safer transportation practices; promote compliance and enforcement; eliminate unnecessary regulatory requirements; convert certain exemptions into regulations of general applicability; finalize outstanding petitions for rulemaking; facilitate international commerce; and make these requirements easier to understand.

J. Privacy Act

Anyone is able to search the electronic form all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2641 note); Pub. L. 104–134, section 31001.

■ 2. In § 171.8, the definition of ''research'' is revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Research means investigation or experimentation aimed at the discovery of new theories or laws and the discovery and interpretation of facts or revision of accepted theories or laws in the light of new facts. Research does not include the application of existing technology to industrial endeavors.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

§ 172.101 [Amended]

■ 4. In § 172.101, in the Hazardous Materials Table:

■ a. The heading for column (9) is revised to read ''(9) Quantity limitations (see (§§ 173.27 and 175.75)'';

■ b. The entry in column (8A) for Air, compressed is amended by adding ''307'';

■ c. The entry in column (8A) for Nitrogen, compressed is amended by adding ''307'';

■ d. The column (2) is amended by adding the entry ''Tires and tire assemblies, *see* Air, compressed *or* Nitrogen, compressed.'';

■ e. The entry in column (7) for ''Ethylene oxide *or* Ethylene oxide with nitrogen *up to a total pressure of 1MPa (10 bar) at 50 degrees C.*'' is amended by adding ''A59''; and

■ f. The entry in column (7) for ''Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide (stabilized as necessary).*'' is amended by adding ''A60''.

■ 5–10. In § 172.102, in paragraph (c)(2), Special Provisions A59 and A60 are added to read as follows:

§ 172.102 Special Provisions.

* * * * *

(c) * * *

(2) * * *

Code/Special Provisions

* * * * *

A59 Sterilization devices, when containing less than 30 mL per inner packaging with no more than 300 mL per outer packaging may be transported in accordance with provisions in

§ 173.4(a)(11)(i). In addition, after filling, each inner packaging must be determined to be leak-tight by placing the inner packaging in a hot water bath at a temperature and for a period of time sufficient to ensure an internal pressure equal to the vapor pressure of ethylene oxide at 55 °C is achieved. Any inner packaging showing evidence of leakage, distortion or other defect under this test may not be transported under the terms of this special provision. In addition to the packaging required in § 173.4, inner packagings must be placed in a sealed plastic bag compatible with ethylene oxide and capable of containing the contents in the event of breakage or leakage of the inner packaging. Glass inner packagings must be placed within a protective shield capable of preventing the glass from puncturing the plastic bag in the event of damage to the packaging (e.g., crushing).

A60 Articles such as sterilization devices, UN2014, Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide (stabilized as necessary*), when containing less than 30 mL per inner packaging with not more than 150 mL per outer packaging, may be transported in accordance with the provisions in § 173.4, irrespective of § 173.4(a)(11)(i), provided such packagings were first subjected to comparative fire testing. Comparative fire testing must show no difference in burning rate between a package as prepared for transport (including the substance to be transported) and an identical package filled with water.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 11. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

■ 12. In § 173.4, new paragraph (a)(11) is added to read as follows:

§ 173.4 Small quantity exceptions.

(a) * * *

(11) For transportation by aircraft:

(i) The hazardous material must be authorized to be carried aboard passenger-carrying aircraft;

(ii) The hazardous material is not authorized to be carried in checked or carry-on baggage.

* * * * *

■ 13. In § 173.7, the section heading is revised and a new paragraph (f) is added to read as follows:

§ 173.7 Government operations and materials.

* * * * *

(f) The requirements of this subchapter do not apply to shipments of hazardous materials carried aboard an aircraft that is not owned by a government or engaged in carrying persons or property for commercial purposes, but is under the exclusive direction and control of the government for a period of not less than 90 days as specified in a written contract or lease. An aircraft is under the exclusive direction and control of a government when the government exercises responsibility for:

(1) Approving crew members and determining they are qualified to operate the aircraft;

(2) Determining the airworthiness and directing maintenance of the aircraft; and

(3) Dispatching the aircraft, including the times of departure, airports to be used, and type and amount of cargo to be carried.

■ 14. In § 173.27, in paragraph (a), the second sentence is revised to read as follows:

§ 173.27 General requirements for transportation by aircraft.

(a) * * * Except for materials not subject to performance packaging requirements in subpart E of this part, a packaging containing a Packing Group III material with a primary or subsidiary risk of Division 4.1, 4.2, 4.3, 5.1, or Class 8 must meet the Packing Group II performance level when offered or intended for transportation by aircraft.

* * * * *

■ 15. In § 173.63, the introductory text in paragraph (b)(1), is revised to read as follows:

§ 173.63 Packaging exceptions.

* * * * *

(b) * * *

(1) Cartridges, small arms, and cartridges power devices (which are used to project fastening devices) which have been classed as a Division 1.4S explosive may be reclassed, offered for transportation, and transported as ORM–D material when packaged in accordance with paragraph (b)(2) of this section. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter. Such transportation is excepted from the requirements of subparts E (Labeling) and F (Placarding) of part 172 of this subchapter. Cartridges, small arms, and cartridges power devices that may be shipped as ORM–D material are limited to:

* * * * *

■ 16. In § 173.150, the introductory text in paragraph (b) is revised to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

(b) *Limited quantities.* Limited quantities of flammable liquids (Class 3) and combustible liquids are excepted from labeling requirements, unless offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized:

* * * * *

■ 17. In § 173.151, the introductory text in paragraphs (b) and (d) is revised to read as follows:

§ 173.151 Exceptions for Class 4.

* * * * *

(b) *Limited quantities of Division 4.1 flammable solids.* Limited quantities of flammable solids (Division 4.1) in Packing Groups II and III are excepted from labeling, unless offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized:

* * * * *

(d) *Limited quantities of Division 4.3 (dangerous when wet) material.* Limited quantities of Division 4.3 (dangerous when wet) solids in Packing Groups II and III are excepted from labeling, unless offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter when packaged in combination packagings according to

this paragraph. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized:

* * * * *

■ 18. In § 173.152, the introductory text in paragraph (b) is revised to read as follows:

§ 173.152 Exceptions for Division 5.1 (oxidizers) and Division 5.2 (organic peroxides).

* * * * *

(b) *Limited quantities.* Limited quantities of oxidizers (Division 5.1) in Packing Groups II and III and organic peroxides (Division 5.2) are excepted from labeling, unless offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter when packaging in combination packagings according to this paragraph. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments of these limited quantities are not subject to subpart F of part 172 (Placarding) of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized:

* * * * *

■ 19. In § 173.153, the introductory text in paragraph (b) is revised to read as follows:

§ 173.153 Exceptions for Division Class 6.1 (poisonous materials).

* * * * *

(b) *Limited quantities of Division 6.1 materials.* The exceptions in this paragraph do not apply to poison-by-inhalation materials limited quantities of poisonous materials (Division 6.1) in Packing Group III are excepted from the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments of these limited quantities are not subject to subpart F of part 172 (Placarding) of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized:

* * * * *

■ 20. In § 173.154, the introductory text in paragraph (b) is revised to read as follows:

§ 173.154 Exceptions for Class 8 (corrosive materials).

* * * * *

(b) *Limited quantities.* Limited quantities of corrosive materials (Class 8) in Packing Groups II and III are excepted from labeling, unless offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments of these limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized:

* * * * *

■ 21. In § 173.155, the introductory text in paragraph (b) is revised to read as follows:

§ 173.155 Exceptions for Class 9 (miscellaneous hazardous materials).

* * * * *

(b) *Limited quantities.* Limited quantities of miscellaneous hazardous materials (Class 9) are excepted from labeling, unless offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments of these limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized:

* * * * *

■ 22. In § 173.217, a new paragraph (f) is added to read as follows:

§ 173.217 Carbon dioxide, solid (dry ice).

* * * * *

(f) Carbon dioxide, solid (dry ice), when offered or transported by aircraft, in quantities not exceeding 2.3 kg (5 pounds) per package and used as a refrigerant for the contents of the package is excepted from all other requirements of this subchapter if the requirements of paragraphs (a) and (d) of this section are complied with and the package is marked ''Carbon dioxide, sold'' or ''Dry ice'', marked with the name of the contents being cooled, and marked with the net weight of the dry ice or an indication the net weight is 2.3 kg (5 pounds) or less.

■ 23. In § 173.220, paragraph (b)(4)(iii) is revised to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, and battery powered vehicles or equipment.

* * * * *

(b) * * *

(4) * * *

(iii) For transportation by aircraft, when carried in aircraft designed or modified for vehicle ferry operations and when all of the following conditions are met:

(A) Authorization for this type operation has been given by the appropriate authority in the government of the country in which the aircraft is registered;

(B) Each vehicle is secured in an upright position;

(C) Each fuel tank is filled in a manner and only to a degree that will preclude spillage of fuel during loading, unloading, and transportation; and

(D) Each area or compartment in which a self-propelled vehicle is being transported is suitably ventilated to prevent the accumulation of fuel vapors.

* * * * *

■ 24. In § 173.306, the introductory text in paragraphs (a), (b), and (h) is revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(a) Limited quantities of compressed gases for which exceptions are permitted as noted by reference to this section in § 172.101 of this subchapter are excepted from labeling, except when offered for transportation or transported by air, and, unless required as a condition of the exception, specification packaging requirements of this subchapter when packaged in accordance with the following paragraphs. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments are not subject to subpart F (Placarding) of part 172 of this subchapter, to part 174 of this subchapter except § 174.24, and to part 177 of this subchapter except § 177.817. Each package may not exceed 30 kg (66 pounds) gross weight.

* * * * *

(b) *Exceptions for foodstuffs, soap, biologicals, electronic tubes, and audible fire alarm systems.* Limited quantities of compressed gases (except Division 2.3 gases) for which exceptions are provided as indicated by reference to this section in § 172.101 of this subchapter, when accordance with one of the following paragraphs, are excepted from labeling, except when offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter. For transportation by aircraft, the package must comply with the applicable requirements of § 173.27 of this subchapter; the net quantity per package may not exceed the quantity specified in column (9A) of the Hazardous Materials Table in § 172.101 of this subchapter; and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments are not subject to subpart F (Placarding) of part 172 of this subchapter, to part 174 of this subchapter, except § 174.24, and to part 177 of this subchapter, except § 177.817. Special exceptions for shipment of certain compressed gases in the ORM–D class are provided in paragraph (i) of this section.

* * * * *

(h) A limited quantity which conforms to the provisions of paragraphs (a)(1), (a)(3), or (b) of this section and is a ''Consumer Commodity'' as defined in § 171.8 of this subchapter, may be renamed ''Consumer Commodity'' and reclassed as ''ORM–D'' material. For transportation by aircraft, only hazardous materials authorized aboard passenger-carrying aircraft may be renamed ''Consumer Commodity'' and reclassed ''ORM–D.'' Each package may not exceed 30 kg (66 pounds) gross weight. In addition to the exceptions provided by paragraphs (a) and (b) of this section:

* * * * *

■ 25. In § 173.307, paragraph (a)(2) is revised to read as follows:

§ 173.307 Exceptions for compressed gases.

* * * * *

(a) * * *

(2) Tires when inflated to pressures not greater than their rated inflation pressures. For transportation by air, tires and tire assemblies must meet the conditions in § 175.8(b)(4) of this subchapter.

* * * * *

■ 26. Part 175 is revised to read as follows:

PART 175—CARRIAGE BY AIRCRAFT

Subpart A—General Information and Regulations

Sec.

175.1 Purpose, scope and applicability.
175.3 Unacceptable hazardous materials shipments.
175.8 Exceptions for operator equipment and items of replacement.
175.9 Exceptions for special aircraft operations.
175.10 Exceptions for passengers, crewmembers, and air operators.
175.20 Compliance and training.
175.25 Notification at air passenger facilities of hazardous materials restrictions.
175.26 Notification at cargo facilities of hazardous materials requirements.
175.30 Inspecting shipments.
175.31 Reports of discrepancies.
175.33 Shipping paper and notification of pilot-in-command.

Subpart B—Loading, Unloading and Handling

175.75 Quantity limitations and cargo location.
175.78 Stowage compatibility of cargo.
175.88 Inspection, orientation and securing of packages of hazardous materials.
175.90 Damaged shipments.

Subpart C—Specific Regulations Applicable According to Classification of Material

175.310 Transportation of flammable liquid fuel; aircraft only means of transportation
175.501 Special requirements for oxidizers and compressed oxygen.
175.630 Special requirements for Division 6.1 and Division 6.2 material.
175.700 Special limitations and requirements for Class 7 materials.
175.701 Separation distance requirements for packages containing Class 7 (radioactive) materials in passenger-carrying aircraft.
175.702 Separation distance requirements for packages containing Class 7 (radioactive) materials in cargo aircraft.
175.703 Other special requirements for the acceptance and carriage of packages containing Class 7 materials.
175.704 Plutonium shipments.
175.705 Radioactive contamination.
175.706 Separation distances for undeveloped film from packages containing Class 7 (radioactive) materials.

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

Subpart A—General Information and Regulations

§ 175.1 Purpose, scope and applicability.

(a) This part prescribes requirements that apply to the transportation of hazardous materials in commerce aboard (including attached to or suspended from) aircraft. The requirements in this part are in addition to other requirements contained in parts 171, 172, 173, 178, and 180 of this subchapter.

(b) This part applies to the offering, acceptance, and transportation of hazardous materials in commerce by aircraft to, from, or within the United States, and to any aircraft of United States registry anywhere in air commerce. This subchapter applies to any person who performs, attempts to perform, or is required to perform any function subject to this subchapter, including—(1) Air carriers, indirect air carriers, and freight forwarders and their flight and non-flight employees, agents, subsidiary and contract personnel (including cargo, passenger and baggage acceptance, handling, loading and unloading personnel); and

(2) Air passengers that carry any hazardous material on their person or in their carry-on or checked baggage.

(c) This part does not apply to aircraft of United States registry under lease to and operated by foreign nationals outside the United States if:

(1) Hazardous materials forbidden aboard aircraft by § 172.101 of this subchapter are not carried on the aircraft; and

(2) Other hazardous materials are carried in accordance with the regulations of the State (nation) of the aircraft operator.

§ 175.3 Unacceptable hazardous materials shipments.

A hazardous material that is not prepared for shipment in accordance with this subchapter may not be offered or accepted for transportation or transported aboard an aircraft.

§ 175.8 Exceptions for operator equipment and items of replacement.

(a) *Operator equipment.* This subchapter does not apply to—

(1) Aviation fuel and oil in tanks that are in compliance with the installation provisions of 14 CFR, chapter 1.

(2) Hazardous materials required aboard an aircraft in accordance with the applicable airworthiness requirements and operating regulations. Items of replacement for such materials must be transported in accordance with paragraph (a)(3) of this section.

(3) Items of replacement (company material (COMAT)) for hazardous materials described in paragraph (a)(2) of this section must be transported in accordance with this subchapter. When an operator transports its own replacement items described in paragraph (a)(2), the following exceptions apply:

(i) In place of required packagings, packagings specifically designed for the items of replacement may be used, provided such packagings provide at least an equivalent level of protection to those that would be required by this subchapter.

(ii) Aircraft batteries are not subject to quantity limitations such as those provided in § 172.101 or § 175.75(a) of this subchapter.

(b) *Other operator exceptions.* This subchapter does not apply to—

(1) Oxygen, or any hazardous material used for the generation of oxygen, for medical use by a passenger, which is furnished by the aircraft operator in accordance with 14 CFR 121.574 or 135.91. For the purposes of this paragraph, an aircraft operator that does not hold a certificate under 14 CFR parts 121 or 135 may apply this exception in conformance with 14 CFR 121.574 or 135.91 in the same manner as required for a certificate holder. See § 175.501 for additional requirements applicable to the stowage of oxygen.

(2) Dry ice (carbon dioxide, solid) intended for use by the operator in food and beverage service aboard the aircraft.

(3) Alcoholic beverages, perfumes, colognes, and liquefied gas lighters carried aboard a passenger-carrying aircraft by the operator for use or sale on the aircraft. Liquefied gas lighters must be examined by the Bureau of Explosives and approved by the Associate Administrator.

(4) A tire assembly with a serviceable tire, provided the tire is not inflated to a gauge pressure exceeding the maximum rated pressure for that tire, and the tire (including valve assemblies) is protected from damage during transport. A tire or tire assembly which is unserviceable or damaged is forbidden from air transport; however, a damaged tire is not subject to the requirements of this subchapter if it contains no material meeting the definition of a hazardous material (e.g., Division 2.2).

§ 175.9 Exceptions for special aircraft operations.

This subchapter does not apply to the following materials used for special aircraft operations when applicable FAA operator requirements have been met, including training operator personnel on the proper handling and stowage of the hazardous materials carried:

(a) Hazardous materials loaded and carried in hoppers or tanks of aircraft certificated for use in aerial seeding, dusting spraying, fertilizing, crop improvement, or pest control, to be dispensed during such an operation.

(b) Parachute activation devices, lighting equipment, oxygen cylinders, flotation devices, smoke grenades, flares, or similar devices carried during a parachute operation.

(c) Smoke grenades, flares, and pyrotechnic devices affixed to aircraft during any flight conducted as part of a scheduled air show or exhibition of aeronautical skill. The aircraft may not carry any persons other than required flight crewmembers. The affixed installation accommodating the smoke grenades, flares, or pyrotechnic devices on the aircraft must be approved for its intended use by the FAA Flight Standards District Office having responsibility for that aircraft.

(d) Hazardous materials are carried and used during dedicated air ambulance, fire fighting, or search and rescue operations.

(e) A transport incubator unit necessary to protect life or an organ preservation unit necessary to protect human organs, carried in the aircraft cabin, provided:

(1) The compressed gas used to operate the unit is in an authorized DOT specification cylinder and is marked, labeled, filled, and maintained as prescribed by this subchapter;

(2) Each battery used is of the nonspillable type;

(3) The unit is constructed so valves, fittings, and gauges are protected from damage;

(4) The pilot-in-command is advised when the unit is on board, and when it is intended for use;

(5) The unit is accompanied by a person qualified to operate it;

(6) The unit is secured in the aircraft in a manner that does not restrict access to or use of any required emergency or regular exit or of the aisle in the passenger compartment; and,

(7) Smoking within 3 m (10 feet) of the unit is prohibited.

(f) Hazardous materials which are loaded and carried on or in cargo only aircraft, and which are to be dispensed or expended during flight for weather control, environmental restoration or protection, forest preservation and protection, fire fighting and prevention, flood control, or avalanche control purposes, when the following requirements are met:

(1) Operations may not be conducted over densely populated areas, in a congested airway, or near any airport where carrier passenger operations are conducted.

(2) Each operator shall prepare and keep current a manual containing operational guidelines and handling procedures, for the use and guidance of flight, maintenance, and ground personnel concerned in the dispensing or expending of hazardous materials. The manual must be approved by the FAA Principal Operations Inspector assigned to the operator.

(3) No person other than a required flight crewmember, FAA inspector, or person necessary for handling or dispensing the hazardous material may be carried on the aircraft.

(4) The operator of the aircraft must have advance permission from the owner of any airport to be used for the dispensing or expending operation.

(5) When dynamite and blasting caps are carried for avalanche control flights, the explosives must be handled by, and at all times be under the control of, a qualified blaster. When required by a State or local authority, the blaster must be licensed and the State or local authority must be identified in writing to the FAA Principal Operations Inspector assigned to the operator.

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

(a) This subchapter does not apply to the following hazardous materials when carried by aircraft passengers or crewmembers provided the requirements of this section are met:

(1) (i) Non-radioactive medicinal and toilet articles for personal use (including aerosols) carried in carry-on and checked baggage. Release devices on aerosols must be protected by a cap or other suitable means to prevent inadvertent release;

(ii) Other aerosols in Div. 2.2 (nonflammable gas) with no subsidiary risk carried in checked baggage only. Release devices on aerosols must be protected by a cap or other suitable means to prevent inadvertent release; and

(iii) The aggregate quantity of these hazardous materials carried by each person may not exceed 2 kg (70 ounces) by mass or 2 L (68 fluid ounces) by volume and the capacity of each container may not exceed 0.5 kg (18 ounces) by mass or 500 ml (17 fluid ounces) by volume.

(2) Safety matches or a lighter intended for use by an individual when carried on one's person or in carry-on baggage only. Lighter fuel, lighter refills, and lighters containing unabsorbed liquid fuel (other than liquefied gas) are not permitted on one's person or in carry-on or checked baggage.

(3) Implanted medical devices in humans or animals that contain hazardous materials, such as a heart pacemaker containing Class 7 (radioactive) material or lithium batteries; and radiopharmaceuticals that have been injected or ingested.

(4) Alcoholic beverages containing:

(i) Not more than 24% alcohol by volume; or

(ii) More than 24% and not more than 70% alcohol by volume when in unopened retail packagings not exceeding 5 liters (1.3 gallons) carried in carry-on or checked baggage, with a total net quantity per person of 5 liters (1.3) gallons for such beverages.

(5) Perfumes and colognes purchased through duty-free sales and carried on one's person or in carry-on baggage.

(6) Hair curlers (curling irons) containing a hydrocarbon gas such as butane, no more than one per person, in carry-on or checked baggage. The safety cover must be securely fitted over the heating element. Gas refills for such curlers are not permitted in carry-on or checked baggage.

(7) A small medical or clinical mercury thermometer for personal use, when carried in a protective case in carry-on or checked baggage.

(8) Small arms ammunition for personal use carried by a crewmember or passenger in checked baggage only, if securely packed in boxes or other packagings specifically designed to carry small amounts of ammunition. Ammunition clips and magazines must also be securely boxed. This paragraph does not apply to persons traveling under the provisions of 49 CFR 1544.219.

(9) One self-defense spray (see § 171.8 of this subchapter), not exceeding 118 mL (4 fluid ounces) by volume, that incorporates a positive means to prevent accidental discharge may be carried in checked baggage only.

(10) Dry ice (carbon dioxide, solid), in quantities not exceeding 2.0 kg (4.4 pounds) per person in carry-on baggage or 2.3 kg (5 pounds) per person in checked baggage, when used to refrigerate perishables. The packaging must permit the release of carbon dioxide gas. For checked baggage, the package must be marked ''DRY ICE'' or ''CARBON DIOXIDE, SOLID'' and must be marked with the net weight of dry ice or an indication the net weight is 2.3 kg (5 pounds) or less.

(11) A self-inflating life jacket fitted with no more than two small gas cartridges (containing no hazardous material other than a Div. 2.2 gas) for inflation purposes plus no more than two spare cartridges. The lifejacket and spare cartridges may be carried in carry-on or checked baggage, with the approval of the aircraft operator.

(12) Small compressed gas cylinders of Division 2.2 (containing no hazardous material other than a Division 2.2 gas) worn by the passenger for the operation of mechanical limbs and, in carry-on and checked baggage, spare cylinders of a similar size for the same purpose in sufficient quantities to ensure an adequate supply for the duration of the journey.

(13) A mercury barometer or thermometer carried as carry-on baggage, by a representative of a government weather bureau or similar official agency, provided that individual advises the operator of the presence of the barometer or thermometer in his baggage. The barometer or thermometer must be packaged in a strong packaging having a sealed inner liner or bag of strong, leak proof and puncture-resistant material impervious to mercury, which will prevent the escape of mercury from the package in any position.

(14) Electrically powered heat-producing articles (e.g., battery-operated equipment such as diving lamps and soldering equipment) as carry-on baggage only and with the approval of the operator of the aircraft. The heat-producing component, or the energy source, must be removed to prevent unintentional functioning during transport.

(15) A wheelchair or other battery-powered mobility aid equipped with a nonspillable battery, when carried as checked baggage, provided—

(i) The battery meets the provisions of § 173.159(d) of this subchapter for nonspillable batteries;

(ii) Visual inspection including removal of the battery, where necessary, reveals no obvious defects (removal of the battery from the housing should be performed by qualified airline personnel only);

(iii) The battery is disconnected and terminals are insulated to prevent short circuits; and

(iv) The battery is—

(A) Securely attached to the wheelchair or mobility aid,

(B) Is removed and placed in a strong, rigid packaging marked ''NONSPILLABLE BATTERY'' (unless fully enclosed in a rigid housing that is properly marked), or

(C) Is handled in accordance with paragraph (a)(16)(iv) of this section.

(16) A wheelchair or other battery-powered mobility aid equipped with a spillable battery, when carried as checked baggage, provided—

(i) Visual inspection including removal of the battery, where necessary, reveals no obvious defects (however, removal of the battery from the housing should be performed by qualified airline personnel only);

(ii) The battery is disconnected and terminals are insulated to prevent short circuits;

(iii) The pilot-in-command is advised, either orally or in writing, prior to departure, as to the location of the battery aboard the aircraft; and

(iv) The wheelchair or mobility aid is loaded, stowed, secured and unloaded in an upright position, or the battery is removed, and carried in a strong, rigid packaging under the following conditions:

(A) The packaging must be leak-tight and impervious to battery fluid. An inner liner may be used to satisfy this requirement if there is absorbent material placed inside of the liner and the liner has a leakproof closure;

(B) The battery must be protected against short circuits, secured upright in the packaging, and be packaged with enough compatible absorbent material to completely absorb liquid contents in the event of rupture of the battery; and

(C) The packaging must be labeled with a CORROSIVE label, marked to indicate proper orientation, and marked with the words ''Battery, wet, with wheelchair.''

(17) Except as provided in § 173.21 of this subchapter, consumer electronic and medical devices (watches, calculators, cameras, cellular phones, lap-top computer, camcorders, and hearing aids, etc.) containing lithium cells or batteries, and spare lithium batteries and cells for these devices, when carried by passengers or crew members in carry-on or checked baggage for personal use. In addition, each installed or spare battery must conform to the following;

(i) The lithium content of the anode of each cell, when fully charged, is not more than 5 g; and

(ii) The aggregate lithium content of the anodes of each battery, when fully charged, is not more than 25g.

(b) The exceptions provided in paragraph (a) of this section also apply to aircraft operators when transporting passenger or crewmember baggage that has been separated from the passenger or crewmember, including transfer to another carrier for transport to its final destination.

§ 175.20 Compliance and training.

An air carrier may not transport a hazardous material by aircraft unless each of its hazmat employees involved in that transportation is trained as required by subpart H of part 172 of this subchapter. In addition, air carriers must comply with all applicable hazardous materials training requirements in 14 CFR Part 121 and 135.

§ 175.25 Notification at air passenger facilities of hazardous materials restrictions.

Each person who engages in for-hire air transportation of passengers shall display notices of the requirements applicable to the carriage of hazardous materials aboard aircraft, and the penalties for failure to comply with those requirements. Each notice must be legible, and be prominently displayed so it can be seen by passengers in locations where the aircraft operator issues tickets, checks baggage, and maintains aircraft boarding areas.

(a) At a minimum, each notice must communicate the following information:

(1) Federal law forbids the carriage of hazardous materials aboard aircraft in your luggage or on your person. A violation can result in five years' imprisonment and penalties of $250,000 or more (49 U.S.C. 5124). Hazardous materials include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives and radioactive materials. Examples: Paints, lighter fluid, fireworks, tear gases, oxygen bottles, and radio-pharmaceuticals.

(2) There are special exceptions for small quantities (up to 70 ounces total) of medicinal and toilet articles carried in your luggage and certain smoking materials carried on your person. For further information contact your airline representative.

(b) The information contained in paragraph (a) of this section must be printed:

(1) In legible English and may, in addition to English, be displayed in other languages;

(2) In lettering of at least 1 cm (0.4 inch) in height for the first sentence and 4.0 mm (0.16 inch) in height for the other sentences; and

(3) On a background of contrasting color.

(c) Size and color of the notice is optional. Additional information, examples, or illustrations, if not inconsistent with the required information, may be included.

§ 175.26 Notification at cargo facilities of hazardous materials requirements.

(a) Each person who engages in the acceptance or transport of cargo for transportation by aircraft shall display notices to persons offering such cargo of the requirements applicable to the carriage of hazardous materials aboard aircraft, and the penalties for failure to comply with those requirements, at each facility where cargo is accepted. Each notice must be legible, and be prominently displayed so it can be seen. At a minimum, each notice must communicate the following information:

(1) Cargo containing hazardous materials (dangerous goods) for transportation by aircraft must be offered in accordance with the Federal Hazardous Materials Regulations (49 CFR parts 171 through 180).

(2) A violation can result in five years' imprisonment and penalties of $250,000 or more (49 U.S.C. 5124).

(3) Hazardous materials (dangerous goods) include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives and radioactive materials.

(b) The information contained in paragraph (a) of this section must be printed:

(1) Legibly in English, and, where cargo is accepted outside of the United States, in the language of the host country; and

(2) On a background of contrasting color.

(c) Size and color of the notice are optional. Additional information, examples, or illustrations, if not inconsistent with required information, may be included.

(d) *Exceptions.* Display of a notice required by paragraph (a) of this section is not required at:

(1) An unattended location (e.g., a drop box) provided a general notice advising customers of a prohibition on shipments of hazardous materials through that location is prominently displayed; or

(2) A customer's facility where hazardous materials packages are accepted by a carrier.

§ 175.30 Inspecting shipments.

(a) No person may accept a hazardous material for transportation aboard an aircraft unless the aircraft operator ensures the hazardous material is:

(1) Authorized, and is within the quantity limitations specified for carriage aboard aircraft according to § 172.101 of this subchapter or as otherwise specifically provided by this subchapter.

(2) Described and certified on a shipping paper prepared in duplicate in accordance with subpart C of part 172 or as authorized by § 171.11 of this subchapter. See § 175.33 for shipping paper retention requirements;

(3) Marked and labeled in accordance with subparts D and E of part 172 or as authorized in § 171.11 of this subchapter, and placarded (when required) in accordance with subpart F of part 172 of this subchapter; and

(4) Labeled with a ''CARGO AIRCRAFT ONLY'' label (see § 172.448 of this subchapter) if the material as presented is not permitted aboard passenger-carrying aircraft.

(b) Except as provided in paragraph (d) of this section, no person may carry a hazardous material in a package, outside container, or overpack aboard an aircraft unless the package, outside container, or overpack is inspected by the operator of the aircraft immediately before placing it:

(1) Aboard the aircraft; or

(2) In a unit load device or on a pallet prior to loading aboard the aircraft.

(c) A hazardous material may be carried aboard an aircraft only if, based on the inspection by the operator, the package, outside container, or overpack containing the hazardous material:

(1) Has no holes, leakage or other indication that its integrity has been compromised; and

(2) For Class 7 (radioactive) materials, does not have a broken seal, except packages contained in overpacks need not be inspected for seal integrity.

(d) The requirements of paragraphs (b) and (c) of this section do not apply to Dry ice (carbon dioxide, solid).

(e) An overpack containing packages of hazardous materials may be accepted only if the operator has taken all reasonable steps to establish that:

(1) The overpack does not contain a package bearing the ''CARGO AIRCRAFT ONLY'' label unless—

(i) The overpack affords clear visibility of and easy access to the package;

(ii) The package contains a material which may be carried inaccessibly under the provisions of §175.75(e); or

(iii) Not more than one package is overpacked.

(2) The proper shipping names, identification numbers, labels and special handling instructions appearing on the inside packages are clearly visible or reproduced on the outside of the overpack, and

(3) Has determined that word ''OVERPACK'', or until October 1, 2007

a statement to the effect that the inside packages comply with the prescribed specifications, appears on the outside of the overpack, when specification packagings are prescribed.

§ 175.31 Reports of discrepancies.

(a) Each person who discovers a discrepancy, as defined in paragraph (b) of this section, relative to the shipment of a hazardous material following its acceptance for transportation aboard an aircraft shall, as soon as practicable, notify the nearest FAA Regional or Field Security Office by telephone or electronically, and shall provide the following information:

(1) Name and telephone number of the person reporting the discrepancy.

(2) Name of the aircraft operator.

(3) Specific location of the shipment concerned.

(4) Name of the shipper.

(5) Nature of discrepancy.

(6) Address of the shipper or person responsible for the discrepancy, if known, by the air carrier.

(b) Discrepancies which must be reported under paragraph (a) of this section are those involving hazardous materials which are improperly described, certified, labeled, marked, or packaged, in a manner not ascertainable when accepted under the provisions of § 175.30(a) of this subchapter including packages or baggage which are found to contain hazardous materials subsequent to their being offered and accepted as other than hazardous materials.

§ 175.33 Shipping paper and notification of pilot-in-command.

(a) When a hazardous material subject to the provisions of this subchapter is carried in an aircraft, a copy of the shipping paper required by § 175.30(a)(2) must accompany the shipment it covers during transportation aboard the aircraft, and the operator of the aircraft must provide the pilot-in-command with accurate and legible written information as early as practicable before departure of the aircraft, which specifies at least the following:

(1) The proper shipping name, hazard class and identification number of the material, including any remaining aboard from prior stops, as specified in § 172.101 of this subchapter or the ICAO Technical Instructions. In the case of Class 1 materials, the compatibility group letter also must be shown. If a hazardous material is described by the proper shipping name, hazard class, and identification number appearing in:

(i) Section 172.101 of this subchapter, any additional description requirements provided in §§ 172.202 and 172.203 of this subchapter must also be shown in the notification.

(ii) The ICAO Technical Instructions, any additional information required to be shown on shipping papers by § 171.11 of this subchapter must also be shown in the notification.

(2) The total number of packages;

(3) The net quantity or gross weight, as applicable, for each package except those containing Class 7 (radioactive) materials. For a shipment consisting of multiple packages containing hazardous materials bearing the same proper shipping name and identification number, only the total quantity and an indication of the quantity of the largest and smallest package at each loading location need to be provided;

(4) The location of the packages aboard the aircraft;

(5) Confirmation that no damaged or leaking packages have been loaded on the aircraft;

(6) For Class 7 (radioactive) materials, the number of packages, overpacks or freight containers their category, transport index (if applicable), and their location aboard the aircraft;

(7) The date of the flight;

(8) The telephone number of a person not aboard the aircraft from whom the information contained in the notification of pilot-in-command can be obtained. The aircraft operator must ensure the telephone number is monitored at all times the aircraft is in flight. The telephone number is not required to be placed on the notification of pilot-in-command if the phone number is in a location in the cockpit available and known to the flight crew.

(9) Confirmation that the package must be carried only on cargo aircraft if its transportation aboard passenger-carrying aircraft is forbidden; and

(10) An indication, when applicable, that a hazardous material is being carried under terms of a special permit.

(b) A copy of the written notification to pilot-in-command shall be readily available to the pilot-in-command during flight. Emergency response information required by subpart G of part 172 of this subchapter must be maintained in the same manner as the written notification to pilot-in-command during transport of the hazardous material aboard the aircraft.

(c) The aircraft operator must—

(1) Retain a copy of the shipping paper required by § 175.30(a)(2) or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper available, upon request, to an authorized official of a federal, state, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained by the operator for one year after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the carrier. The date on the shipping paper may be the date a shipper notifies the air carrier that a shipment is ready for transportation, as indicated on the air bill or bill of lading, as an alternative to the date the shipment is picked up or accepted by the carrier. Only an initial carrier must receive and retain a copy of the shipper's certification, as required by § 172.204 of this subchapter.

(2) Retain a copy of each notification of pilot-in-command, an electronic image thereof, or the information contained therein for 90 days at the airport of departure or the operator's principal place of business.

(3) Have the information required to be retained under this paragraph readily accessible at the airport of departure and the intended airport of arrival for the duration of the flight leg.

(4) Make available, upon request, to an authorized official of a Federal, State, or local government agency (including an emergency responders) at reasonable times and locations, the documents or information required to be retained by this paragraph.

(d) The documents required by paragraphs (a) and (b) this section may be combined into one document if it is given to the pilot-in-command before departure of the aircraft.

Subpart B—Loading, Unloading and Handling

§ 175.75 Quantity limitations and cargo location.

(a) No person may carry on an aircraft a hazardous material except as permitted by this subchapter.

(b) Except as otherwise provided in this subchapter, no person may carry a hazardous material in the cabin of a passenger-carrying aircraft or on the flight deck of any aircraft, and the hazardous material must be located in a place that is inaccessible to persons other than crew-members. Hazardous materials may be carried in a main deck cargo compartment of a passenger aircraft provided that the compartment is inaccessible to passengers and that it meets all certification requirements for a Class B aircraft cargo compartment in 14 CFR 25.857(b) or for a Class C aircraft cargo compartment in 14 CFR 25.857(c). A package bearing a KEEP AWAY FROM HEAT handling marking must be

protected from direct sunshine and stored in a cool and ventilated place, away from sources of heat.

(c) For each package containing a hazardous material acceptable for carriage aboard passenger-carrying aircraft, no more than 25 kg (55 pounds) net weight of hazardous material may be loaded in an inaccessible manner. Loaded in an inaccessible manner means cargo that is loaded in such a manner that a crew member or other authorized person cannot handle, and when size and weight permit, separate such packages from other cargo during flight. This includes materials loaded in a freight container in an accessible cargo compartment. In addition to the 25 kg limitation above, an additional 75 kg (165 pounds) net weight of Division 2.2 (non-flammable compressed gas) may be loaded in an inaccessible manner.

(d) Each package containing a hazardous material acceptable only for cargo aircraft must be loaded in such a manner that a crew member or other authorized person can access, handle and when size and weight permit, separate such packages from other cargo during flight.

(e) The requirements of paragraph (c) and (d) of this section do not apply to the following hazardous materials:

(1) Class 3—Packing Group III (that do not meet the definition of another hazard class), Division 6.1 (except those also labeled FLAMMABLE), Division 6.2, Class 7, Class 9 or ORM–D;

(2) Division 2.2 in that an additional 75 kg (165 pounds) net weight of Division 2.2 material is authorized in inaccessible locations.

(3) Packages of hazardous materials transported aboard a cargo aircraft, when other means of transportation are impracticable or not available, in accordance with procedures approved in writing by the FAA Regional or Field Security Office in the region where the operator is located; and

(4) Packages of hazardous materials carried on small, single pilot, cargo aircraft if:

(i) No person is carried on the aircraft other than the pilot, an FAA inspector, the shipper or consignee of the material, a representative of the shipper or consignee so designated in writing, or a person necessary for handling the material;

(ii) The pilot is provided with written instructions on the characteristics and proper handling of the materials; and

(iii) Whenever a change of pilots occurs while the material is on board, the new pilot is briefed under a hand-to-hand signature service provided by the operator of the aircraft.

(5) At a minimum, quantity limits and loading instructions in the following Quantity and Loading Tables must be followed to maintain acceptable quantity and loading between packages containing hazardous materials. The Quantity and Loading Tables are as follows:

Section 175.75 Quantity and Loading Tables

PASSENGER AIRCRAFT

Packages Authorized for Transport Onboard a Passenger Aircraft

In an accessible cargo compartment		
If packages are accessible	If packages are inaccessible	If packages are in a freight container
No limit	25 kg per compartment plus an additional 75 kg of Division 2.2 material.	25 kg per container plus an additional 75 kg of Division 2.2 material.

In an inaccessible cargo compartment	
If packages are not in a freight container	If packages are in a freight container
25 kg per compartment plus an additional 75 kg of Division 2.2 material	25 kg per compartment plus an additional 75 kg of Division 2.2 material.

CARGO ONLY AIRCRAFT

Packages Authorized for Transport Onboard a Passenger Aircraft

In an accessible cargo compartment		
If packages are accessible	If packages are inaccessible	If packages are in a freight container
No limit	25 kg per compartment plus an additional 75 kg of Division 2.2 material.	25 kg per container plus an additional 75 kg of Division 2.2 material.

In an inaccessible cargo compartment	
If packages are not in a freight container	If packages are in a freight container
25 kg per compartment plus an additional 75 kg of Division 2.2 material	25 kg per compartment plus an additional 75 kg of Division 2.2 material.

Packages Only Authorized for Transport Aboard a Cargo Aircraft

In an accessible cargo compartment			
If packages are accessible	If packages are inaccessible	If packages are in a freight container and are accessible	If packages are in a freight container and are inaccessible
No limit	Forbidden Except the following materials are not subject to this restriction:	No Limit	Forbidden. Except the following materials are not subject to this restriction:

In an accessible cargo compartment			
If packages are accessible	If packages are inaccessible	If packages are in a freight container and are accessible	If packages are in a freight container and are inaccessible
	a. Class 3, PG III (unless the hazardous material meets the definition of another hazard class) b. Class 6, (unless also labeled as a flammable liquid) c. Class 7, (unless the hazardous material meets the definition of another hazard class)	....	a. Class 3, PG III (unless the hazardous material meets the definition of another hazard class); b. Class 6, (unless also labeled as a flammable liquid); c. Class 7, (unless the hazardous material meets the definition of another hazard class).

In an inaccessible cargo compartment	
If packages are not in a freight container	If packages are in a freight container
Forbidden ..... Except the following materials are not subject to this restriction: a. Class 3, PG III (unless the hazardous material meets the definition of another hazard class). b. Class 6, (unless also labeled as a flammable liquid) ..... c. Class 7, (unless the hazardous material meets the definition of another hazard class).	Forbidden. Except the following materials are not subject to this restriction: a. Class 3, PG III (unless the hazardous material meets the definition of another hazard class); b. Class 6, (unless also labeled as a flammable liquid); c. Class 7, (unless the hazardous material meets the definition of another hazard class).

§ 175.78 Stowage compatibility of cargo.

(a) For stowage on an aircraft, in a cargo facility, or in any other area at an airport designated for the stowage of hazardous materials, packages containing hazardous materials which might react dangerously with one another may not be placed next to each other or in a position that would allow a dangerous interaction in the event of leakage.

(b) At a minimum, the segregation instructions prescribed in the following Segregation Table must be followed to maintain acceptable segregation between packages containing hazardous materials with different hazards. The Segregation Table instructions apply whether or not the class or division is the primary or subsidiary risk. The Segregation Table follows:

SEGREGATION TABLE

Hazard label	Class or division							
	1	2	3	4.2	4.3	5.1	5.2	8
1	Note 1	Note 2	Note 2	Note 2	Note 2	Note 2	Note 2	Note 2
2	Note 2	.....	.....	.....	.....	.....	.....	.....
3	Note 2	.....	.....	.....	.....	X	.....	.....
4.2	Note 2	.....	.....	.....	.....	X	.....	.....
4.3	Note 2	.....	.....	.....	.....	.....	.....	X
5.1	Note 2	.....	X	X	.....	.....	.....	.....
5.2	Note 2	.....	.....	.....	.....	.....	.....	.....
8	Note 2	.....	.....	.....	X	.....	.....	.....

(c) Instructions for using the Segregation Table are as follows:

(1) Hazard labels, classes or divisions not shown in the table are not subject to segregation requirements.

(2) Dots at the intersection of a row and column indicate that no restrictions apply.

(3) The letter ''X'' at the intersection of a row and column indicates that packages containing these classes of hazardous materials may not be stowed next to or in contact with each other, or in a position which would allow interaction in the event of leakage of the contents.

(4) Note 1. (''Note 1'' at the intersection of a row and column means the following:

(i) For explosives in compatibility groups A through K and N—

(A) Packages bearing the same compatibility group letter and the same division number may be stowed together.

(B) Explosives of the same compatibility group, but different divisions may be stowed together provided the whole shipment is treated as belonging to the division having the smaller number. However, when explosives of Division 1.5 Compatibility Group D are stowed together with explosives of Division 1.2 Compatibility Group D, the whole shipment must be treated as Division 1.1, Compatibility Group D.

(C) Packages bearing different compatibility group letters may not be stowed together whether or not they belong to the same division, except as provided in paragraphs (c)(3)(ii) and (iii) of this section.

(ii) Explosives in Compatibility Group L may not be stowed with explosives in other compatibility groups. They may only be stowed with the same type of explosives in Compatibility Group L.

(iii) Explosives of Division 1.4, Compatibility Group S, may be stowed with explosives of all compatibility groups except for Compatibility Groups A and L.

(iv) Other than explosives of Division 1.4, Compatibility Group S (see paragraph (c)(3)(iii) of this section), and Compatibility Groups C, D and E that may be stowed together, explosives that

do not belong in the same compatibility group may not be stowed together.

(A) Any combination of substances in Compatibility Groups C and D must be assigned to the most appropriate compatibility group shown in the § 172.101 Table of this subchapter.

(B) Explosives in Compatibility Group N may be stowed together with explosives in Compatibility Groups C, D, or E when the combination is assigned Compatibility Group D.

(v) See §§ 175.704(b)(1) and (c)(1).

(5) Note 2. ''Note 2'' at the intersection of a row and column means that other than explosives of Division 1.4, Compatibility Group S, explosives may not be stowed together with that class.

(6) Packages containing hazardous materials with multiple hazards in the class or divisions, which require segregation in accordance with the Segregation Table, need not be segregated from other packages bearing the same UN number.

(7) A package labeled ''BLASTING AGENT'' may not be stowed next to or in a position that will allow contact with a package of special fireworks or railway torpedoes.

§ 175.88 Inspection, orientation and securing packages of hazardous materials.

(a) A unit load device may not be loaded on an aircraft unless the device has been inspected and found to be free from any evidence of leakage from, or damage to, any package containing hazardous materials.

(b) A package containing hazardous materials marked ''THIS SIDE UP'' or ''THIS END UP'', or with arrows to indicate the proper orientation of the package, must be stored and loaded aboard an aircraft in accordance with such markings. A package without orientation markings containing liquid hazardous materials must be stored and loaded with top closure facing upward.

(c) Packages containing hazardous materials must be secured in an aircraft in a manner that will prevent any movement in flight which would result in damage to or change in the orientation of the packages. Packages containing Class 7 (radioactive) materials must be secured in a manner that ensures that the separation requirements of §§ 175.701 and 175.702 will be maintained at all times during flight.

§ 175.90 Damaged shipments.

(a) Packages or overpacks containing hazardous materials must be inspected for damage or leakage after being unloaded from an aircraft. When packages or overpacks containing hazardous materials have been transported in a unit load device, the area where the unit load device was stowed must be inspected for evidence of leakage or contamination immediately upon removal of the unit load device from the aircraft, and the packages or overpacks must be inspected for evidence of damage or leakage when the unit load device is unloaded. In the event of leakage or suspected leakage, the compartment in which the package, overpack, or unit load device was carried must be inspected for contamination and decontaminated, if applicable.

(b) Except as provided in § 175.700, the operator of an aircraft must remove from the aircraft any package, baggage or cargo that appears to be leaking or contaminated by a hazardous material. In the case of a package, baggage or cargo that appears to be leaking, the operator must ensure that other packages, baggage or cargo in the same shipment are in proper condition for transport aboard the aircraft and that no other package, baggage or cargo has been contaminated or is leaking. If an operator becomes aware that a package, baggage or cargo not identified as containing a hazardous material has been contaminated, or the operator has cause to believe that a hazardous material may be the cause of the contamination, the operator must take reasonable steps to identify the nature and source of contamination before proceeding with the loading of the contaminated baggage or cargo. If the contaminating substance is found or suspected to be hazardous material, the operator must isolate the package, baggage or cargo and take appropriate steps to eliminate any identified hazard before continuing the transportation of the item by aircraft.

(c) No person may place aboard an aircraft a package, baggage or cargo that is contaminated with a hazardous material or appears to be leaking.

(d) If a package containing a material in Division 6.2 (infectious substance) is found to be damaged or leaking, the person finding the package must:

(1) Avoid handling the package or keep handling to a minimum;

(2) Inspect packages adjacent to the leaking package for contamination and withhold from further transportation any contaminated packages until it is ascertained that they can be safely transported;

(3) Comply with the reporting requirement of §§ 171.15 and 175.31 of this subchapter; and

(4) Notify the consignor or consignee.

Subpart C—Specific Regulations Applicable According to Classification of Material

§ 175.310 Transportation of flammable liquid fuel; aircraft only means of transportation.

(a) When other means of transportation are impracticable, flammable liquid fuels may be carried on certain passenger and cargo aircraft as provided in this section, without regard to the packaging references and quantity limits listed in Columns 7, 8 and 9 of the § 172.101 Hazardous Materials Table. All requirements of this subchapter that are not specifically covered in this section continue to apply to shipments made under the provisions of this section. For purposes of this section ''impracticable'' means transportation is not physically possible or cannot be performed by routine and frequent means of other transportation, due to extenuating circumstances. Extenuating circumstances include: conditions precluding highway or water transportation, such as a frozen vessel route; road closures due to catastrophic weather or volcanic activity; or a declared state of emergency. The desire for expedience of a shipper, carrier, or consignor, is not relevant in determining whether other means of transportation are impracticable. The stowage requirements of § 175.75(a) do not apply to a person operating an aircraft under the provisions of this section which, because of its size and configuration, makes it impossible to comply.

(b) A small passenger-carrying aircraft operated entirely within the State of Alaska or into a remote area, in other than scheduled passenger operations, may carry up to 76 L (20 gallons) of flammable liquid fuel (in Packing Group II or Packing Group III), when:

(1) The flight is necessary to meet the needs of a passenger; and

(2) The fuel is carried in one of the following types of containers:

(i) Strong tight metal containers of not more than 20 L (5.3 gallons) capacity, each packed inside a UN 4G fiberboard box, at the Packing Group II performance level, or each packed inside a UN 4C1 wooden box, at the Packing Group II performance level;

(ii) Airtight, leakproof, inside containers of not more than 40 L (11 gallons) capacity and of at least 28-gauge metal, each packed inside a UN 4C1 wooden box, at the Packing Group II performance level;

(iii) UN 1A1 steel drums, at the Packing Group I or II performance level, of not more than 20 L (5.3 gallons) capacity; or

(iv) In fuel tanks attached to flammable liquid fuel powered equipment under the following conditions:

(A) Each piece of equipment is secured in an upright position;

(B) Each fuel tank is filled in a manner that will preclude spillage of fuel during loading, unloading, and transportation; and

(C) Fueling and refueling of the equipment is prohibited in or on the aircraft.

(3) In the case of a passenger-carrying helicopter, the fuel or fueled equipment must be carried on external cargo racks or slings.

(c) Flammable liquid fuels may be carried on a cargo aircraft, subject to the following conditions:

(1)(i) The flammable liquid fuel is in Packing Group II or Packing Group III except as indicated in paragraph (c)(1)(iv) of this section;

(ii) The fuel is carried in packagings authorized in paragraph (b) of this section;

(iii) The fuel is carried in metal drums (UN 1A1, 1B1, 1N1) authorized for Packing Group I or Packing Group II liquid hazardous materials and having rated capacities of 220 L (58 gallons) or less. These single packagings may not be transported in the same aircraft with Class 1, Class 5, or Class 8 materials.

(iv) Combustible and flammable liquid fuels (including those in Packing Group I) may be carried in installed aircraft tanks each having a capacity of more than 450 L (118.9 gallons), subject to the following additional conditions:

(A) The tanks and their associated piping and equipment and the installation thereof must have been approved for the material to be transported by the appropriate FAA Flight Standards District Office.

(B) In the case of an aircraft being operated by a certificate holder, the operator shall list the aircraft and the approval information in its operating specifications. If the aircraft is being operated by other than a certificate holder, a copy of the FAA Flight Standards District Office approval required by this section must be carried on the aircraft.

(C) The crew of the aircraft must be thoroughly briefed on the operation of the particular bulk tank system being used.

(D) During loading and unloading and thereafter until any remaining fumes within the aircraft are dissipated:

(*1*) Only those electrically operated bulk tank shutoff valves that have been approved under a supplemental type certificate may be electrically operated.

(*2*) No engine or electrical equipment, avionic equipment, or auxiliary power units may be operated, except position lights in the steady position and equipment required by approved loading or unloading procedures, as set forth in the operator's operations manual, or for operators that are not certificate holders, as set forth in a written statement.

(*3*) Static ground wires must be connected between the storage tank or fueler and the aircraft, and between the aircraft and a positive ground device.

(2) [Reserved]

(d) The following restrictions apply to loading, handling, or carrying fuel under the provisions of this section:

(1) During loading and unloading, no person may smoke, carry a lighted cigarette, cigar, or pipe, or operate any device capable of causing an open flame or spark within 15 m (50 feet) of the aircraft.

(2) No person may fill a container, other than an approved bulk tank, with a Class 3 material or combustible liquid or discharge a Class 3 material or combustible liquid from a container, other than an approved bulk tank, while that container is inside or within 15 m (50 feet) of the aircraft.

(3) When filling an approved bulk tank by hose from inside the aircraft, the doors and hatches of the aircraft must be fully open to insure proper ventilation.

(4) Each area or compartment in which the fuel is loaded is suitably ventilated to prevent the accumulation of fuel vapors.

(5) Fuel is transferred to the aircraft fuel tanks only while the aircraft is on the ground.

(6) Before each flight, the pilot-in-command:

(i) Prohibits smoking, lighting matches, the carrying of any lighted cigar, pipe, cigarette or flame, and the use of anything that might cause an open flame or spark, while in flight; and

(ii) For passenger aircraft, informs each passenger of the location of the fuel and the hazards involved.

(e) Operators must comply with the following:

(1) If the aircraft is being operated by a holder of a certificate issued under 14 CFR part 121 or part 135, operations must be conducted in accordance with conditions and limitations specified in the certificate holder's operations specifications or operations manual accepted by the FAA. If the aircraft is being operated under 14 CFR part 91, operations must be conducted in accordance with an operations plan accepted and acknowledged in writing by the FAA Principal Operations Inspector assigned to the operator.

(2) The aircraft and the loading arrangement to be used must be approved for the safe carriage of the particular materials concerned by the FAA Principal Operations Inspector assigned to the operator.

§ 175.501 Special requirements for oxidizers and compressed oxygen.

(a) Compressed oxygen, when properly labeled Oxidizer or Oxygen, may be loaded and transported as provided in this section. No person may load or transport any other package containing a hazardous material for which an OXIDIZER label is required under this subchapter in an inaccessible cargo compartment that does not have a fire or smoke detection system and a fire suppression system.

(b) In addition to the quantity limitations prescribed in § 175.75, cylinders of compressed oxygen must be stowed in accordance with the following:

(1) No more than a combined total of six cylinders of compressed oxygen may be stowed on an aircraft in the inaccessible aircraft cargo compartment(s) that do not have fire or smoke detection systems and fire suppression systems.

(2) When loaded into a passenger-carrying aircraft or in an inaccessible cargo location on a cargo-only aircraft, cylinders of compressed oxygen must be stowed horizontally on the floor or as close as practicable to the floor of the cargo compartment or unit load device. This provision does not apply to cylinders stowed in the cabin of the aircraft in accordance with paragraph (c) of this section.

(3) When transported in a Class B aircraft cargo compartment (see 14 CFR 25.857(b)) or its equivalent (i.e., an accessible cargo compartment equipped with a fire or smoke detection system but not a fire suppression system), cylinders of compressed oxygen must be loaded in a manner that a crew member can see, handle and, when size and weight permit, separate the cylinders from other cargo during flight. No more than six cylinders of compressed oxygen and, in addition, one cylinder of medical-use compressed oxygen per passenger needing oxygen at destination—with a rated capacity of 850 L (30 cubic feet) or less of oxygen—may be carried in a Class B aircraft cargo compartment or its equivalent.

(c) A cylinder containing medical-use compressed oxygen, owned or leased by an aircraft operator or offered for transportation by a passenger needing it for personal medical use at destination, may be carried in the cabin of a passenger-carrying aircraft in

accordance with the following provisions:

(1) No more than six cylinders belonging to the aircraft operator and, in addition, no more than one cylinder per passenger needing the oxygen at destination, may be transported in the cabin of the aircraft under the provisions of this paragraph (c);

(2) The rated capacity of each cylinder may not exceed 850 L (30 cubic feet);

(3) Each cylinder and its overpack or outer packaging must conform to the provisions of this subchapter (see Special Provision A52 in § 172.102 of this subchapter);

(4) The aircraft operator shall securely stow the cylinder in its overpack or outer packaging in the cabin of the aircraft and shall notify the pilot-in-command as specified in § 175.33 of this part; and

(5) Shipments under this paragraph (c) are not subject to—

(i) Subpart C and, for passengers only, subpart H of part 172 of this subchapter;

(ii) Section 173.25(a)(4) of this subchapter; and

(iii) Paragraph (b) of this section.

§ 175.630 Special requirements for Division 6.1 and Division 6.2 material.

(a) A package required to bear a POISON, POISON INHALATION HAZARD, or INFECTIOUS SUBSTANCE label may not be carried in the same compartment of an aircraft with material which is marked as or known to be a foodstuff, feed, or any other edible material intended for consumption by humans or animals unless:

(1) The Division 6.1 or Division 6.2 material and the foodstuff, feed, or other edible material are loaded in separate unit load devices which, when stowed on the aircraft, are not adjacent to each other; or

(2) The Division 6.1 or Division 6.2 material are loaded in one closed unit load device and the foodstuff, feed or other material is loaded in another closed unit load device.

(b) No person may operate an aircraft that has been used to transport any package required to bear a POISON or POISON INHALATION HAZARD label unless, upon removal of such package, the area in the aircraft in which it was carried is visually inspected for evidence of leakage, spillage, or other contamination. All contamination discovered must be either isolated or removed from the aircraft. The operation of an aircraft contaminated with such Division 6.1 materials is considered to be the carriage of poisonous materials under paragraph (a) of this section.

§ 175.700 Special limitations and requirements for Class 7 materials.

(a) Except as provided in §§ 173.4, 173.422 and 173.423 of this subchapter, no person may carry any Class 7 materials aboard a passenger-carrying aircraft unless that material is intended for use in, or incident to research (See § 171.8 of this subchapter), medical diagnosis or treatment. Regardless of its intended use, no person may carry a Type B(M) package aboard a passenger-carrying aircraft, a vented Type B(M) package aboard any aircraft, or a liquid pyrophoric Class 7 material aboard any aircraft.

(b) *Limits for transport index and criticality safety index.* A person may carry the following Class 7 (radioactive) materials aboard an aircraft only when—

(1) On a passenger-carrying aircraft—

(i) Each single package on the aircraft has a transport index no greater than 3.0;

(ii) The combined transport index and the combined criticality index of all the packages on the aircraft are each no greater than 50.

(2) On a cargo aircraft—

(i) Each single package on the aircraft has a transport index no greater than 10.0.

(ii) The combined transport index of all the packages on the aircraft is no greater than 200, and the combined criticality index of all the packages on the aircraft is no greater than—

(A) 50 on a non-exclusive use cargo aircraft, or

(B) 100 on an aircraft assigned for the exclusive use of the shipper [offeror] for the specific shipment of fissile Class 7 material. Instructions for the exclusive use must be developed by the shipper [offeror] and carrier, and the instructions must accompany the shipping papers.

(3) The combined transport index and combined criticality index are determined by adding together the transport index and criticality index numbers, respectively, shown on the labels of the individual packages.

(c) No person may carry in a passenger-carrying aircraft any package required to be labeled RADIOACTIVE YELLOW–II or RADIOACTIVE YELLOW–III label unless the package is carried on the floor of the cargo compartment or freight container.

§ 175.701 Separation distance requirements for packages containing Class 7 (radioactive) materials in passenger-carrying aircraft.

(a) The following table prescribes the minimum separation distances that must be maintained in a passenger-carrying aircraft between Class 7 (radioactive) materials labeled RADIOACTIVE YELLOW–II or RADIOACTIVE YELLOW–III and passengers and crew:

Transport index or sum of transport indexes of all packages in the aircraft or predesignated area	Minimum separation distances	
	Centimeters	Inches
0.1 to 1.0	30	12
1.1 to 2.0	50	20
2.1 to 3.0	70	28
3.1 to 4.0	85	34
4.1 to 5.0	100	40
5.1 to 6.0	115	46
6.1 to 7.0	130	52
7.1 to 8.0	145	57
8.1 to 9.0	155	61
9.1 to 10.0	165	65
10.1 to 11.0 ..	175	69
11.1 to 12.0 ..	185	73
12.1 to 13.0 ..	195	77
13.1 to 14.0 ..	205	81
14.1 to 15.0 ..	215	85
15.1 to 16.0 ..	225	89
16.1 to 17.0 ..	235	93
17.1 to 18.0 ..	245	97
18.1 to 20.0 ..	260	102
20.1 to 25.0 ..	290	114
25.1 to 30.0 ..	320	126
30.1 to 35.0 ..	350	138
35.1 to 40.0 ..	375	148
40.1 to 45.0 ..	400	157
45.1 to 50.0 ..	425	167

(b) When transported aboard passenger-carrying aircraft packages, overpacks or freight containers labeled Radioactive Yellow–II or Radioactive Yellow–III must be separated from live animals by a distance of at least 0.5 m (20 inches) for journeys not exceeding 24 hours, and by a distance of at least 1.0 m (39 inches) for journeys longer than 24 hours.

(c) Except as provided in paragraph (d) of this section, the minimum separation distances prescribed in paragraphs (a) and (b) of this section are determined by measuring the shortest distance between the surfaces of the Class 7 (radioactive) materials package and the surfaces bounding the space occupied by passengers or animals. If more than one package of Class 7 (radioactive) materials is placed in a passenger-carrying aircraft, the minimum separation distance for these packages shall be determined in accordance with paragraphs (a) and (b) of this section on the basis of the sum of the transport index numbers of the individual packages or overpacks.

(d) *Predesignated areas.* A package labeled RADIOACTIVE YELLOW–II or RADIOACTIVE YELLOW–III may be carried in a passenger-carrying aircraft

in accordance with a system of predesignated areas established by the aircraft operator. Each aircraft operator that elects to use a system of predesignated areas shall submit a detailed description of the proposed system to the Associate Administrator for approval prior to implementation of the system. A proposed system of predesignated areas is approved if the Associate Administrator determines that it is designed to assure that:

(1) The packages can be placed in each predesignated area in accordance with the minimum separation distances prescribed in paragraph (a) of this section; and

(2) The predesignated areas are separated from each other by minimum distance equal to at least four times the distances required by paragraphs (a) and (b) of this section for the predesignated area containing packages with the largest sum of transport indexes.

§ 175.702 Separation distance requirements for packages containing Class 7 (radioactive) materials in cargo aircraft.

(a) No person may carry in a cargo aircraft any package required by § 172.403 of this subchapter to be labeled Radioactive Yellow–II or Radioactive Yellow–III unless:

(1) The total transport index for all packages does not exceed 50.0 and the packages are carried in accordance with § 175.701(a); or

(2) The total transport index for all packages exceeds 50.0; and

(i) The separation distance between the surfaces of the radioactive materials packages, overpacks or freight containers and any space occupied by live animals is at least 0.5 m (20 inches) for journeys not exceeding 24 hours and at least 1.0 m (39 inches) for journeys longer than 24 hours; and

(ii) The minimum separation distances between the radioactive material and any areas occupied by persons that are specified in the following table are maintained:

Transport index or sum of transport indexes of all packages in the aircraft or predesignated area	Minimum separation distances	
	Centimeters	Inches
50.1 to 60.0 ..	465	183
60.1 to 70.0 ..	505	199
70.1 to 80.0 ..	545	215
80.1 to 90.0 ..	580	228
90.1 to 100.0	610	240
100.1 to 110.0	645	254
110.1 to 120.0	670	264
120.1 to 130.0	700	276
131.1 to 140.0	730	287
140.1 to 150.0	755	297
151.1 to 160.0	780	307
160.1 to 170.0	805	317
170.1 to 180.0	830	327
180.1 to 190.0	855	337
190.1 to 200.0	875	344

(b) The criticality safety index of any single group of packages must not exceed 50.0 (as used in this section, the term ''group of packages'' means packages that are separated from each other in an aircraft by a distance of 6 m (20 feet) or less); and

(c) Each group of packages must be separated from every other group in the aircraft by not less than 6 m (20 feet), measured from the outer surface of each group.

§ 175.703 Other special requirements for the acceptance and carriage of packages containing Class 7 materials.

(a) No person may accept for carriage in an aircraft packages of Class 7 materials, other than limited quantities, contained in a rigid or non-rigid overpack, including a fiberboard box or plastic bag, unless they have been prepared for shipment in accordance with § 172.403(h) of this subchapter.

(b) Each shipment of fissile material packages must conform to the requirements of §§ 173.457 and 173.459 of this subchapter.

(c) No person shall offer or accept for transportation, or transport, by air—

(1) Vented Type B(M) packages, packages which require external cooling by an ancillary cooling system or packages subject to operational controls during transport; or

(2) Liquid pyrophoric Class 7 (radioactive) materials.

(d) Packages with radiation levels at the package surface or a transport index in excess of the limits specified in § 173.441(a) of this subchapter may not be transported by aircraft except under special arrangements approved by the Associate Administrator.

§ 175.704 Plutonium shipments.

Shipments of plutonium which are subject to 10 CFR 71.88(a)(4) must comply with the following:

(a) Each package containing plutonium must be secured and restrained to prevent shifting under normal conditions.

(b) A package of plutonium having a gross mass less than 40 kg (88 pounds) and both its height and diameter less than 50 cm (19.7 inches)—

(1) May not be transported aboard an aircraft carrying other cargo required to bear a Division 1.1 label; and

(2) Must be stowed aboard the aircraft on the main deck or the lower cargo compartment in the aft-most location that is possible for cargo of its size and weight, and no other cargo may be stowed aft of packages containing plutonium.

(c) A package of plutonium exceeding the size and weight limitations in paragraph (b) of this section—

(1) May not be transported aboard an aircraft carrying other cargo required to bear any of the following labels: Class 1 (all Divisions), Class 2 (all Divisions), Class 3, Class 4 (all Divisions), Class 5 (all Divisions), or Class 8; and

(2) Must be securely cradled and tied down to the main deck of the aircraft in a manner that restrains the package against the following internal forces acting separately relative to the deck of the aircraft; Upward, 2g; Forward, 9g; Sideward, 1.5g; Downward, 4.5g.

§ 175.705 Radioactive contamination.

(a) A carrier shall take care to avoid possible inhalation, ingestion, or contact by any person with Class 7 (radioactive) materials that may have been released from their packagings.

(b) When contamination is present or suspected, the package containing a Class 7 material, any loose Class 7 material, associated packaging material, and any other materials that have been contaminated must be segregated as far as practicable from personnel contact until radiological advice or assistance is obtained from the U.S. Department of Energy or appropriate State or local radiological authorities.

(c) An aircraft in which Class 7 material has been released must be taken out of service and may not be returned to service or routinely occupied until the aircraft is checked for radioactive contamination and it is determined in accordance with § 173.443 of this subchapter that the dose rate at every accessible surface is less than 0.005 mSv per hour (0.5 mrem per hour) and there is no significant removable surface contamination.

(d) Each aircraft used routinely for transporting Class 7 materials shall be periodically checked for radioactive contamination, and an aircraft must be taken out of service if contamination exceeds the level specified in paragraph (c). The frequency of these checks shall be related to the likelihood of contamination and the extent to which Class 7 materials are transported.

(e) In addition to the reporting requirements of (§§ 171.15 and 171.16 of this subchapter and § 175.31 of this part, an aircraft operator shall notify the offeror at the earliest practicable moment following any incident in which there has been breakage, spillage, or suspected radioactive contamination involving Class 7 (radioactive) materials shipments.

§ 175.706 Separation distances for undeveloped film from packages containing Class 7 (radioactive) materials.

No person may carry in an aircraft any package of Class 7 (radioactive) materials required by §172.403 of this subchapter to be labeled Radioactive Yellow–II or Radioactive Yellow–III closer than the distances shown in the table below to any package marked as containing underdeveloped film.

Transport index	Minimum separation distance to nearest undeveloped film for various times in transit									
	Up to 2 hours		2 to 4 hours		4 to 8 hours		8 to 12 hours		Over 12 hours	
	Meters	Feet	Meters	Feet	Meters	Feet	Meters	Feet	Meters	Feet
0.1 to 1.0	0.3	1	0.6	2	0.9	3	1.2	4	1.5	5
1.1 to 5.0	0.9	3	1.2	4	1.8	6	2.4	8	3.3	11
5.1 to 10.0	1.2	4	1.8	6	2.7	9	3.3	11	4.5	15
10.1 to 20.0	1.5	5	2.4	8	3.6	12	4.8	16	6.6	22
20.1 to 30.0	2.1	7	3	10	4.5	15	6	20	8.7	29
30.1 to 40.0	2.4	8	3.3	11	5.1	17	6.6	22	9.9	33
40.1 to 50.0	2.7	9	3.6	12	5.7	19	7.2	24	10.8	36

Issued in Washington, DC on March 14, 2006 under the authority delegated in 49 CFR part 1.

Brigham A. McCown,

Acting Administrator.

[FR Doc. 06–2596 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Wednesday,
March 22, 2006

Part III

Department of Transportation

Federal Transit Administration

Public Transportation on Indian Reservation Program (49 U.S.C. 5311(c)(1)): Notice of Public Meetings, Proposed Grant Program Provisions; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–06–24143]

Public Transportation on Indian Reservations Program (49 U.S.C. 5311(c)(1)): Notice of Public Meetings, Proposed Grant Program Provisions

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice and request for comment; Announcement of public meetings.

SUMMARY: This notice does several things. First, it summarizes comments FTA received in response to information about a new program for Public Transportation on Indian Reservations Program (hereafter referred to as the Tribal Transit Program) included in an earlier **Federal Register** notice dated November 30, 2005 (70 FR 71950), ''FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,'' and details FTA's response to those comments. Second, it announces the process FTA proposes to use to allocate available funds starting in FY 2006 and the grant program provisions that FTA proposes to apply to the program. Third, the notice seeks further comment on the proposed process and grant program provisions. Finally, the notice announces two (2) public meetings sponsored by FTA to provide direct outreach to tribal governments about the Tribal Transit Program and allow for discussion of this notice.

DATES: Comments should be submitted by April 21, 2006. Late-filed comments will be considered to the extent practicable.

Public Meeting Dates: FTA will host two public meetings in April 2006 intended to provide direct outreach to tribal governments as part of the FTA's rollout of the Tribal Transit Program. The first meeting will be held on April 4, 2006 in Denver, Colorado and the second meeting will be held on April 7, 2006 in Kansas City, Missouri.

ADDRESSES: You may submit comments identified by the docket number [Docket No. FTA–06–24143] by any of the following methods:

1. Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

2. Fax: 202–493–2251.

3. Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL–401, Washington, DC 20590–0001.

4. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–06–24143) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted, without change, to *http://dms.dot.gov* including any personal information provided and will be available to internet users. Please see the Privacy Act section of this document.

Docket: For access to the docket to read background documents and comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Public Meeting Addresses: The meeting in Denver will be held at the Holiday Inn Denver International Airport, 15500 East 40th Avenue, Denver, Colorado 80239. The second meeting in Kansas City, Missouri will be held at the Westin Crown Center, 1 Pershing Road, Kansas City, Missouri 64108. Anyone interested in attending one of these April meetings should register on-line at *http://ttap.colostate.edu/ParticipantRegistration.cfm.*

FOR FURTHER INFORMATION CONTACT: Jamie Durham or Lorna Wilson, Office of Program Management, Federal Transit Administration, 400 Seventh Street, SW., Room 9315, Washington, DC 20590, phone: (202) 366–2053, fax: (202) 366–7951 or e-mail questions to *fta.tribalprogram@fta.dot.gov.*

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I. Overview

On November 30, 2005, FTA published a notice (70 FR 71950, 71965–66) in the **Federal Register**, which broadly described new program changes to or extensions of existing programs contained in its new reauthorization legislation, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

Among other things, FTA solicited comments relating to the newly created program entitled ''Public Transportation on Indian Reservations'' (hereafter referred to as the Tribal Transit Program) in SAFETEA–LU that authorizes $45 million from the Nonurbanized Area Formula Grants Program (49 U.S.C. 5311) for FY 2006—2009 to be apportioned for grants directly to Indian tribes (49 U.S.C. 5311(c)(1)). Under the Tribal Transit Program, Indian tribes are eligible direct recipients. The funds are to be apportioned for grants to Indian tribes for any purpose eligible under the Nonurbanized Area Formula Program (section 5311). More than 20 tribes and several State Departments of Transportation (DOTs) submitted comments. These comments and our responses are described later in this notice.

FTA is hosting two public meetings with tribal governments to discuss the Tribal Transit Program. FTA encourages public participation at these meetings; however, in order for FTA to properly consider any comments, they must be submitted in writing to the docket for this notice. (See ''Instructions'' under the **ADDRESSES** section of this notice.) FTA will further consider comments it receives in response to this notice and at its public meetings as it finalizes the grant program provisions and develops its FY 2006 Notice of Funding Availability for the Tribal Transit Program.

II. Comments and Responses

FTA specifically requested comments in the November 30th **Federal Register** notice on what criteria should be considered in selecting Indian tribes to receive funding and what factors should be used in allocating available funds among successful applicants. FTA also sought comment about appropriate terms and conditions for the program, especially from Indian tribes that previously received FTA funding. The comments are grouped by topic in this notice as follows: (A) Basis for formula apportionment; (B) eligibility; (C) eligible activities; (D) terms and

conditions; (E) Indian self-determination and self-governance; and, (F) other. The following paragraphs summarize the comments and our responses. FTA's responses reflect the agency's analysis to date. Since we are continuing to seek comment on aspects of the program, it is possible that additional data could be provided which results in FTA amending our position before it is finalized in the FY 2006 Notice of Funding Availability.

A. Basis for Formula Apportionment

In its November 30, 2005 **Federal Register** notice, FTA stated that SAFETEA–LU does not specify a basis for formula apportionment. The following comments were received regarding the basis for allocating the available funds.

Comment: Multiple commenters suggested FTA use a competitive grant process for allocating the available funds.

Response: FTA agrees with this comment. FTA determined that applying the Nonurbanized Area Formula Grants Program (section 5311) formula to this apportionment and allocating funds to all eligible Indian tribes would only provide a small amount of money to each tribe and not all tribes may be interested or able to implement transit projects. Instead, FTA proposes using an annual competitive selection process to allocate funds among eligible applicants. This process is described in section III of this notice.

Comment: Multiple commenters suggested that instead of awarding funds to those with the planning process complete or tribal transit service in existence, FTA should offer a 60 or 120 day period for accepting any applications and award funds based on identified transit needs or planning activities designed to identify transit needs as reflected in either of the following: Indian tribe's long range plan, planning documents from other tribal government services or programs, or tribally established community assessments.

Response: FTA agrees with this comment in part. FTA intends to evaluate how a project addresses the identified transit needs and the extent of planning in the eligibility determination and evaluation criteria, but FTA will limit eligibility in the first year to those that have completed the planning process or have tribal transit service in existence (see FTA response to comments in section on eligible activities). FTA agrees with the suggestion to offer a 60-day period for accepting proposals.

Comment: Multiple commenters encouraged FTA to establish minimum and maximum grant awards to ensure that grant funding is large enough to aid Indian tribes significantly and to ensure that as large a number of tribes as possible are able to receive the benefits of this program.

Response: FTA agrees with this comment in principle. Since this is a new program, however, FTA does not intend to establish minimum and maximum grant awards in the first year of the program in order to determine the level of tribal interest. Proposals must identify a specific project and include a detailed project budget to be considered. The amount allocated to each successful applicant will be based in part on the total amount of funding requested by all applicants and the appropriateness of the amount requested for the activities proposed by the applicant.

Comment: One commenter suggested allocating one-third of available funds evenly among eligible applicants, one-third on a percentage based upon resident population to be served, and one-third using a competitive method among eligible applicants who can leverage funds to best accomplish major milestones that align with the overall program intent.

Response: FTA agrees with this comment in part. FTA does not agree in allocating the funds in percentages; but, for reasons noted above proposes allocating the entire apportionment to competitively selected projects by evaluating the benefits of the project, which include evaluating the ratio of estimated daily ridership to total service area, the tribal population of the transit service area, and the ratio of unduplicated users to tribal population. FTA also proposes evaluating applicant's financial commitment and the extent of coordination, including the applicants's ability to leverage additional funding.

Comment: One commenter suggested using a scaled weighting factor for pre-existing tribal programs, tribal transportation improvement plans, planning documents from other tribal government services or programs.

Response: FTA agrees with this comment in part. FTA does not intend to use a scaled weighting factor, but propose evaluating the adequacy of project planning as one of the selection criteria.

Comment: One commenter suggested using a rating system that included criteria such as: higher consideration for funding to Indian tribes currently providing transportation services, Indian tribes providing transportation services for participants who are 60- and older, or Indian tribes providing transportation services for handicapped participants.

Response: FTA agrees with this comment in principle. Higher consideration will not necessarily be given to tribes currently funding transit service, or tribes providing these specific transit services, but proposals may receive higher scores based on how the proposed project addresses the needs demonstrated, on whether the human service transportation needs were considered, and on how well the project coordinates with other programs, such as transportation services for participants who are 60 years and older and transportation services for handicapped participants.

Comment: One commenter suggested the emphasis should be placed on new and expanded services, discouraging supplanting of funds currently used to support public transportation.

Response: FTA agrees with this comment. In the first year of the program, applications will be accepted for both new (with planning complete) and expanded services. In addition to funding under the Tribal Transit Program, States must continue to include the tribes in the equitable distribution of the section 5311 funds apportioned to the States.

B. Eligibility

In its November 30, 2005 **Federal Register** notice, FTA stated that because planning is not an eligible activity under this program, it was considering limiting participation to Indian tribes that already have transit options or that have already conducted planning and are prepared to implement new transit service. The following paragraphs summarize the comments and responses received in response to this approach.

Comments: Comments received showed both support and disfavor of this approach; those showing disfavor were concerned that this approach would leave a substantial amount of money unobligated because there are too few tribal transit programs in existence. Additionally, commenters were concerned that this was not Congress' intent for the program and urged FTA to reconsider planning as an eligible activity (discussed in more detail in the next section).

Response: FTA recognizes these concerns, but is bound by the authority in the statute that states the funds are eligible for any purpose under section 5311. These purposes include capital and operating expenses for rural transit and rural intercity bus service. Planning is not eligible under section 5311 except pursuant to 5311(e), which is limited to

15 percent of the funds. Since planning for transit service is not directly eligible under the Tribal Transit Program, FTA will limit the eligibility in the first year of the program to tribes that have completed the planning process and are ready to implement new transit service or projects that expand or enhance existing transit services. If there are remaining funds available at the completion of the award process, the funds will remain in the Tribal Transit Program and will be available for allocation in FY 2007.

Comment: One commenter encouraged FTA to define eligible recipients as Federally recognized Indian tribes only.

Response: FTA agrees with this comment. FTA accepts this recommendation as consistent with the statute and with other DOT programs for tribes. For the duration of the program, FTA will consider eligible direct recipients for this program to be the Federally recognized Indian tribes as identified by the Bureau of Indian Affairs (BIA) in the U.S. Department of the Interior. As of March 2006, there are 561 federally-recognized Indian tribes. Non-federally-recognized Indian tribes are eligible for section 5311 funds apportioned to the States, but not as eligible direct recipients, and not under the Tribal Transit Program.

C. Eligible Activities

FTA did not solicit public comment on eligible activities, but we received many comments encouraging FTA to define planning as an eligible activity under the Tribal Transit Program. Section 3013 in SAFETEA–LU amended 49 U.S.C. 5311(c) by authorizing funding for the Tribal Transit Program ''for any purpose eligible under this *section*''. The term ''section'' in this provision refers to 49 U.S.C. 5311. Eligible purposes under section 5311 include capital projects, operating costs of equipment and facilities, and the acquisition of public transportation services for rural transit and rural intercity bus service. Planning activities are not eligible costs for funding in section 5311, except pursuant to section 5311(e), limited to 15 percent of the funds apportioned to the State, and 5311(f) for intercity bus service. Congress may enact a technical correction to allow the use of Tribal Transit Program funds for planning purposes in future years. Until this legislation is enacted, FTA recommends the use of other resources, such as Indian Reservation Roads Program funds, or section 5311 funds allotted from a State's administrative funds for planning proposed new tribal transit service. Additional comments received were about the language in sections 5311(e) and 5311(f); those comments and responses are described below.

Comment: Many commenters expressed confusion regarding the language in the statute about the 15 percent permissible for States to spend on administration, planning, and technical assistance.

Response: FTA agrees that this section can be confusing. Section 5311(e) provides that a State may use not more than 15 percent of its annual apportionment for administration, planning and technical assistance. The State may allocate funds from the 15 percent for use for these purposes by subrecipients, including tribes. If the State allocates funds from this source to a tribe, the funds can be awarded to the tribe by the State or directly from FTA. There is no statutory authority for using funds from the Tribal Transit Program for administration, planning and technical assistance.

Comment: A few commenters also expressed confusion with regards to the requirement in section 5311(f) that requires each State to spend 15 percent of its annual section 5311 apportionment ''to carry out a program to develop and support intercity bus transportation,'' unless the Governor certifies that ''the intercity bus service needs of the State are being met.'' The confusion surrounds the eligibility of ''planning and marketing for intercity bus transportation'' as described in 5311(f).

Response: FTA agrees that this section can be confusing. The intent of section 5311(f) is to support the connection between nonurbanized (rural and small urban) areas and the larger regional or national system of intercity bus service. Another objective is to support services to meet the intercity travel needs of residents in nonurbanized areas. Support of intercity bus service is an eligible expense under section 5311; therefore funds may be used for planning and marketing specifically for that service. FTA does not intend to require tribes to spend 15 percent of the funds allotted to them under the Tribal Transit Program for intercity bus service because the requirement to spend 15 percent for intercity bus service only applies to the Section 5311 funds apportioned to the States.

D. Terms and Conditions

FTA solicited comments about appropriate terms and conditions for the program and requirements we should consider waiving for this program, especially from Indian tribes that previously received FTA funding. The comments and FTA's responses are below.

Comment: One commenter suggested that requirements and procedures be commensurate with the funds available.

Response: FTA agrees with this comment. FTA is undertaking a thorough and complete review of its statutory, regulatory, and program requirements to determine the appropriate substantive and programmatic requirements that will apply to the Tribal Transit Program. FTA is seeking comment on the proposed requirements described in section III of this notice.

Comment: One commenter suggested that FTA's ''open door'' requirement of section 5311, which stipulates services must be available to the general public, should not be waived.

Response: FTA agrees with this comment. Section 5311(c)(1) does not permit FTA to waive the requirement that eligible projects under the Tribal Transit Program be open to the general public. Transit service funded under this program must be available to the general public in the service area; services funded by this program cannot purposefully exclude other members of the general public, nor can they purposefully exclude persons who are not members of the applicant tribe.

Comment: One commenter suggested that the tribal program should be subject to similar comprehensive planning requirements to ensure maximum utilization of limited funds and to avoid duplication of service.

Response: FTA agrees with this comment. Planning is included in the eligibility determination and adequacy of planning is included in the proposed evaluation criteria for selecting projects as described in section III of this notice.

Comment: One commenter suggested that tribes be active participants in the locally-developed, coordinated public transit-human services transportation planning process.

Response: FTA agrees with this comment in principle. A locally-developed, coordinated public transit-human services transportation plan is not an explicit requirement of 49 U.S.C. 5311; however, in areas seeking funds under the Job Access Reverse Commute Program (49 U.S.C. 5316), the New Freedom Program (49 U.S.C. 5317), or the Special Needs of Elderly Individuals and Individuals with Disabilities Program (49 U.S.C. 5310), tribal transit agencies are encouraged to participate in the development of the plan.

Comment: One commenter suggested that tribes demonstrate financial stability and agree to data and financial reporting requirements.

Response: FTA agrees with this comment. Demonstration of financial capacity and financial reporting are necessary requirements. Demonstration of financial commitment is included in the proposed evaluation criteria.

Comment: One commenter representing multiple tribal clients suggested that tribes not be required to comply with State-administered Disadvantaged Business Enterprise (DBE) certification programs as a condition of receiving tribal transit grants.

Response: FTA agrees with this comment. FTA does not intend to apply 49 CFR part 26 to tribes under this program; this includes the requirement of complying with State-administered DBE certification programs.

Comment: One commenter suggested that Americans with Disabilities Act of 1990 (ADA) standards be kept in place.

Response: FTA agrees with this comment. Since service funded under the Tribal Transit Program is limited to public transportation as defined in 49 U.S.C. 5302(a)(10), FTA believes it is in the national interest to ensure accessible transportation for persons with disabilities as required by the Americans with Disabilities Act of 1990.

Comment: Several commenters encouraged FTA to consider providing 80 percent Federal share for operating assistance and anywhere from 80–100 percent Federal share for capital projects.

Response: FTA agrees with this comment in part. FTA recognizes the particular challenges tribes may have providing the local match, but to ensure that participants in this program have a vested interest we propose requiring some local match. To encourage participation in this program FTA is proposing two alternatives for lower local match requirements than typically required under other FTA programs. The proposals are described in detail in section III of this notice and FTA welcomes comments on which proposal we should apply under this program.

Comment: Several commenters said that tribes should not have to provide local match for the first two years of grant award.

Response: FTA agrees with this comment in part. FTA is proposing to use our existing procedures to allow eligible recipients to request deferral of the local share, as needed, as long as the commitment to provide local match before project completion exists. FTA disagrees with allowing local share to be waived entirely in the first two years of grant award; some local match will be required from the Indian tribes and the source of these funds must be identified in proposals.

E. Indian Self-Determination and Self-Governance

FTA did not solicit comment on this subject, but many commenters encouraged FTA to develop a program that supports tribal sovereignty and self-determination. Commenters recommended that FTA develop grant-funding agreements which are consistent with the self-determination and self-governance procedures and suggested that the DOT was authorized in SAFETEA–LU to enter into Indian Self Determination and Education Assistance Act (ISDEAA) contracts and agreements with tribal governments.

Response: FTA agrees that the program should be developed in a way that recognizes tribal sovereignty, but disagrees with specific suggestions to use the ISDEAA contracts and agreements. Section 1119 in SAFETEA-LU amended section 202(d) in Chapter 2 of Title 23 (Highways) by authorizing funds for Indian tribal governments to be disbursed by contracts or agreements in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*). This statutory authorization is limited to Federal-aid highway funding provisions in Chapter 2 of Title 23 (Highways) of the U.S. Code. The Tribal Transit Program is authorized in SAFETEA–LU by an amendment to 49 U.S.C. 5311. Section 5311 is codified in Chapter 53 (Public Transportation) of Title 49 of the United States Code. Therefore, FTA does not have the statutory authority to use contracts and agreements under the Indian Self-Determination and Education Assistance Act for projects funded under the Tribal Transit Program.

F. Other

Many commenters encouraged FTA to work with Indian tribes on a government-to-government basis, to follow-up the previous comment period with additional consultation meetings, and to further coordinate our SAFETEA–LU implementation efforts with the Indian Reservation Roads (IRR) Program Coordinating Committee to develop mutually agreeable tribal transit procedures. Further, commenters requested that these procedures be coordinated with the Deputy Assistant Secretary for Tribal Government Affairs within DOT and encouraged FTA to document best practices, resources, and up-to-date information through Web sites such as Community Transportation Association of America (CTAA), American Public Transportation Association (APTA), National Rural Technical Assistance Program (RTAP), Multi-State Technical Assistance Program (MTAP), Tribal Technical Assistance Program (TTAP), Project Action and others.

Response: FTA is committed to operating within a government-to-government relationship with Indian tribes consistent with the DOT's Order on Program, Policies, and Procedures affecting American Indians, Alaska Natives, and Indian tribes (DOT 5301.1, November 16, 1999). FTA looks forward to providing up-to-date resources through our Web site and others, where possible. FTA has consulted with the Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA) since the legislation was signed on various aspects of this program. FTA is currently working with the regional Tribal Technical Assistance Program (TTAP) Centers on tribal transportation matters and will continue to work with them as we implement the program. To the maximum extent possible, we will continue to coordinate with other agencies and departments as this program is developed. In addition, FTA has scheduled two outreach meetings to provide face-to-face opportunities for interested Indian tribes to meet with FTA staff and discuss the program.

III. Proposed Grant Program Provisions

FTA initially considered using an interim measure to allocate FY 2006 funds based on letters of interest. Rather than establishing an interim process for allocating the funds, however, we now propose establishing the allocation methodology and program requirements for the life of the program. Using the comments received in the first public comment period and the restrictions of the statute, we describe below our proposal for the allocation methodology and program requirements of the Tribal Transit Program. The paragraphs are grouped by topic: (A) Basis for allocating funds; (B) eligibility; (C) eligible activities; (D) terms and conditions; (E) local share. We invite comments on the methodology and program requirements proposed for the Tribal Transit Program described in the following paragraphs.

A. Basis for Allocating Funds

Rather than establishing a new process for allocating available funds each year, we propose using an annual competitive selection process to evaluate, score, and rank proposals to receive funding. We propose using the following criteria to competitively select projects for funding:

- Demonstration of need.

- Benefits of project.
- Adequacy of project planning.
- Financial commitment.
- Coordination.

FTA will also consider the reasonableness of the amount requested compared to the scope of the proposed project. If the total available funds in a given year are not awarded, they will remain in the program for allocation in the following year. We intend to solicit the proposals through publishing a Notice of Funding Availability (''NOFA''). The NOFA will contain all necessary program information including: (1) Funding opportunity description; (2) award information; (3) eligibility information; (4) application and submission information; (5) application review information; and (6) award administration information, including requirements associated with an FTA grant.

B. Eligibility

Eligible direct recipients include Federally-recognized Indian tribes or Alaska Native villages, groups, or communities as identified by the BIA in the U.S. Department of the Interior. Unless the statute is amended to include planning as an eligible activity, eligible applicants will be limited to tribes that have completed the planning process and are ready to implement transit service and tribes with existing transit services. To be eligible applicants, tribes must have the requisite legal, financial, and technical capabilities to receive and administer Federal funds under this program.

C. Eligible Activities

Tribal Transit Program funds may be used for any purpose authorized under section 5311(b)(1). This means that grants can be awarded to recipients located in rural and small urban areas (populations under 50,000) for public transportation capital projects, operating costs of equipment and facilities for use in public transportation, and the acquisition of public transportation services, including service agreements with private providers of public transportation services.

Service funded under this program must be designed to maximize use by members of the general public who have disabilities. Coordinated human service transportation that primarily serves elderly persons and persons with disabilities, but which is not restricted from carrying other members of the public, is considered available to the general public if it is marketed as public transportation.

D. Terms and Conditions

Section 3013 of SAFETEA–LU amends 49 U.S.C. 5311(c) by authorizing funds for the Tribal Transit Program ''under such terms and conditions as may be established by the Secretary.'' The term ''Secretary'' in this provision refers to the Secretary of Transportation. The Secretary of Transportation possesses the authority to limit the applicability of certain substantive and procedural requirements that are set forth in Title 49 (Transportation) of the United States Code. This includes the Federal transit assistance provisions in Chapter 53 (Public Transportation) of Title 49, which are administered by FTA. As previously stated in this notice, FTA is in the process of reviewing the appropriate Department of Transportation and FTA requirements that should apply to grants awarded under the Tribal Transit Program. The Secretary of Transportation, however, does not possess the authority to limit the applicability of government-wide grant requirements (commonly referred to as cross-cutting requirements) that apply to all Federal grants. Recipients of Federal assistance are subject to many requirements regardless of the source of funds, for example restrictions on lobbying. Recipients under the Tribal Transit Program are subject to these government-wide grant requirements, which are not all named in this document. In addition, some Federal requirements are applicable regardless of whether Federal assistance is provided. For example, the requirement for drivers of vehicles over a certain size is to hold a Commercial Drivers License.

FTA believes the following specific statutory or regulatory requirements must or should be applied to grants awarded under this program:

1. Common Grant Rule (49 CFR part 18), ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.'' (Federally recognized Indian tribes are included in the definition of ''Government'' in 49 CFR part 18.)

2. Civil Rights Act of 1964. Compliance with civil rights statutes will be required, including compliance with equity in service and general Equal Employment Opportunity (EEO) principles. FTA proposes, however, that grantees under this program not be required to comply with the FTA program-specific guidance for Title VI and Title VII.

3. Section 504 and ADA requirements in 49 CFR parts 27, 37 and 38. Part 27 is the regulation for nondiscrimination on the basis of disability in programs and activities receiving or benefiting from federal financial assistance. Part 37 is the DOT's regulation that implements the Americans with Disabilities Act. Part 38 is the regulation that specifies the accessibility specifications for transportation vehicles.

4. Drug and Alcohol Testing requirements. 49 CFR part 655 is an FTA regulation that addresses a national safety issue for operators of public transit.

5. Planning requirements. The FTA/FHWA joint planning regulations within 23 CFR part 450 are not applicable since tribal governments are neither States nor metropolitan areas. However, we propose to require that all Indian tribes participating in the Tribal Transit Program include projects within their transportation plans (*i.e.* Tribal Transportation Improvement Plan (TTIP) or Long Range Transportation Plan (LRTP)) and attach their plan to the Statewide Transportation Improvement Program (STIP). Proposals will be accepted for rating so long as the project exists in a TTIP or the tribe's LRTP. However, FTA will not award a grant until the approved project is attached or included in the STIP.

6. National Environmental Policy Act (NEPA) requirement. This requirement, similar to the Department's ADA regulation, is an environmental requirement that applies government-wide to projects funded with Federal financial assistance, and although Federal departments might have issued their own regulations, such as DOT's regulation in part 771, this requirement is considered a cross-cutting requirement.

7. School Bus and Charter Service. The regulatory implementation requirements regarding school bus and charter service must apply because the Tribal Transit Program is ''for purposes eligible under 5311'' and the definition of public transportation does not include school bus and charter service. Section 5323(d) places limits on the charter services, which may be provided by federally funded public transportation operators (49 CFR part 604). Section 5323(f) prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulation (49 CFR part 605) does permit regular service to be modified to accommodate school students along with the general public.

8. National Transit Database (NTD) Reporting Requirement. 49 U.S.C 5335 requires NTD reporting for all direct recipients of section 5311 funds. FTA has not yet identified the specific data

elements that tribes will be required to report or the reporting mechanism, but will seek to minimize the reporting burden while collecting basic information about tribal transit systems for inclusion in assessments of the effectiveness of FTA programs on a national basis. Specific reporting instructions will be provided in subsequent years.

Given the precedent established in executive memorandums, executive orders, and our own DOT order to streamline processes and requirements for programs that affect Indian tribes, we are proposing not to apply the DOT and FTA requirements listed below. FTA solicits comments on the requirements we propose not to apply.

1. Labor Protections (49 U.S.C. 5333(b)). The labor protection requirements of section 5333(b) are applied to the section 5311 program through a standard warranty agreed to in writing by each subrecipient of the States to which funds are apportioned. The State, as FTA's direct grantee, certifies to the Department of Labor that each subrecipient has agreed to the warranty. Because the tribes will be direct recipients of FTA under this program, not subrecipients of the States, the existing warranty arrangements are irrelevant. Further, the potential impact of grants under this program on organized labor is insignificant, so FTA does not consider it necessary to require alternative labor protective arrangements.

2. Buy America (49 CFR part 661). Currently Buy America requirements apply only to procurements over $100,000. Given the small size of the program relative to other FTA programs to which Buy America applies, FTA believes the benefits of imposing this requirement would be insignificant relative to the potential increased administrative burden to the tribes not receiving assistance under any other FTA program.

3. Pre-award and post-delivery audits (49 CFR part 633). These requirements are substantially related to the Buy America requirements described above which we are proposing not to apply.

4. Bus Testing (49 CFR part 665). FTA is proposing not to apply this requirement to simplify vehicle procurements by tribes funded only under the Tribal Transit Program. Since the vast majority of vehicle models that are subject to the requirement will have been tested before purchase by other FTA grantees, the purposes of the regulation can be met without imposing additional administrative burdens on the tribes.

5. FTA specific civil rights program requirements, including Title VI, and Equal Employment Opportunity (EEO) program specific requirements. FTA believes that requiring compliance with the underlying civil rights statutes is sufficient. Grantees will be required to certify annually to providing equity in service and EEO compliance. The FTA specific requirements described in FTA Circulars 4702.1 and 4704.1 are currently in the process of being updated. Given the smaller size of the program relative to other FTA programs to which the FTA specific Title VI and EEO guidance applies, FTA believes the benefits of imposing these requirements would be insignificant relative to the potential increased administrative burden to the tribes not receiving assistance under any other FTA program.

6. Disadvantaged Business Enterprise (DBE) (49 CFR part 26). FTA has determined that it is not necessary to apply the DBE requirements to this program, because the administrative burdens of compliance with the regulation by the tribes may be disproportionate to the incremental benefits. The cross-cutting nondiscrimination requirements that are applied to the Tribal Transit Program will satisfy the nondiscrimination aspects of the DBE rule. Under the regulation, DBE goals and plans are required only for contracting opportunities, exceeding $250,000, not including vehicle procurements, which may not apply to many grantees under this program. Tribes can be expected to use DBEs, including tribally-owned businesses when there are contracting opportunities whether or not the rule is applied. Transit vehicle manufacturers have a direct compliance obligation under the regulation.

When the terms and conditions for the program are finalized they will be incorporated into certifications and assurances and grant agreements that all successful applicants must sign in order to receive Tribal Transit Program funds. These terms and conditions will be included in the Notice of Funding Availability for this program. Please note that tribes receiving grants under other FTA programs are subject to the standard grant provisions for those programs. The authority of the Secretary to determine the terms and conditions applies only to the Tribal Transit Program.

E. Local Share

In response to comments that the requirement for a local share is a barrier to participation in the program while still ensuring that the tribe has an investment in the project, FTA proposes two local share alternatives and invites comments on which the tribes find more beneficial. The final Notice of Funding Availability will include only one of these alternatives:

a. FTA proposes a Federal share of 80 percent and a local share of 20 percent for both capital and operating assistance projects. This reduces the local share required for operating assistance compared to the standard FTA 50/50 match and maintains the standard 80/20 match for capital assistance. Under this proposal the Federal share available to a tribe under the Tribal Transit Program could be lower than the Federal share for a similar project funded from a State's section 5311 apportionment should that State apply the higher federal share (''sliding scale'') allowed under section 5311, which ranges for States described in section 120(b) of title 23 from 81.3 percent to 94.89 percent, in accordance with the formula under that section for States with a large amount of federal lands; or

b. FTA proposes for the tribal program the highest Federal share (''sliding scale'') allowed under section 5311 for States described in section 120(b) of title 23 in accordance with the formula under that section for States with a large amount of federal lands. Since tribes are not States and some tribes are located in more than one State, FTA will allow tribes the highest sliding scale Federal share allowed for any State under section 120(b)(1): 95 percent (rounded up from 94.89) for capital and 60 percent (rounded up from 59.31) for operating assistance. This proposal provides a higher Federal share for capital projects and a slightly higher Federal share for operating assistance than the standard 80/20 and 50/50 match and reduces the overall local share required for most tribal transit projects.

To encourage coordination among Federal agencies that provide transportation services, matching funds may be provided from Federal agencies other than the Department of Transportation. Federal Lands Highway program funds, administered by the Federal Highway Administration, may also be used as matching funds as can Indian Reservation Roads (IRR) Program funds.

FTA solicits comments on the requirements presented above that we propose to apply under this program.

IV. Public Outreach Meetings

FTA is holding one-day outreach meetings in Denver, Colorado on Tuesday, April 4, 2006 and Kansas City, Missouri on Friday, April 7, 2006 as

part of the implementation of the Tribal Transit Program created by SAFETEA–LU. The meetings will be a combination of general sessions and break-out sessions and will last from 8 a.m. until 4 p.m. The meetings will allow FTA to provide a program update and receive input from interested parties on the information presented in this notice. While we encourage free dialogue during the public meetings, comments must be submitted in writing to the docket in order to be considered by FTA. All participants must pre-register for the meeting of their choice by registering online at *http://ttap.colostate.edu/ParticipantRegistration.cfm.* Registration is also available by fax; please send an e-mail to *fta.tribalprogram@fta.dot.gov* if registration forms are needed or if you have any questions regarding these meetings. Registration for the meetings was scheduled to end Thursday, March 16, 2006. However, due to the late publication of this notice, we will accept registration through March 23, 2006.

Issued in Washington, DC, this 16th day of March, 2006.

Sandra K. Bushue,

Deputy Administrator.

Appendix—FTA Regional Offices

Richard H. Doyle, Regional Administrator, Region 1—Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617 494–2055.

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Letitia Thompson, Regional Administrator, Region 2—New York, One Bowling Green, Room 429 New York, NY 10004—1415, Tel. No. 212 668–2170.

States served: New Jersey, New York, and the Virgin Islands.

Susan Borinsky, Regional Administrator, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215 656–7100.

States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.

Yvette Taylor, Regional Administrator, Region 4—Atlanta, Atlanta Federal Center, Suite 17T50, 61 Forsyth Street SW, Atlanta, GA 30303, Tel. 404 562–3500.

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee.

Don Gismondi, Deputy Regional Administrator, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312 353–2789.

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Robert C. Patrick, Regional Administrator, Region 6—Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817 978–0550.

States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.

Mokhtee Ahmad, Regional Administrator, Region 7—Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816 329–3920.

States served: Iowa, Kansas, Missouri, and Nebraska.

Lee O. Waddleton, Regional Administrator, Region 8—Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300.

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Leslie T. Rogers, Regional Administrator, Region 9—San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926, Tel. 415 744–3133.

States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands.

Rick Krochalis, Regional Administrator, Region 10—Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206 220–7954.

States served: Alaska, Idaho, Oregon, and Washington.

[FR Doc. E6–4100 Filed 3–21–06; 8:45 am]

BILLING CODE 4910–57–P

Federal Register

Wednesday,
March 22, 2006

Part IV

Department of Education

Institute of Education Sciences; Notice Inviting Applications for Grants To Support Education Research for Fiscal Year (FY) 2007; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.305A, 84.305B, 84.324A, 84.324B, and 84.902B]

Institute of Education Sciences; Notice Inviting Applications for Grants To Support Education Research for Fiscal Year (FY) 2007

SUMMARY: The Director of the Institute of Education Sciences (Institute) announces the Institute's FY 2007 competitions for grants to support education research. The Director takes this action under the Education Sciences Reform Act of 2002, Title I of Public Law 107–279. The intent of these grants is to provide national leadership in expanding fundamental knowledge and understanding of education from early childhood education through postsecondary and adult education.

SUPPLEMENTARY INFORMATION:

Mission of Institute

A central purpose of the Institute is to provide parents, educators, students, researchers, policymakers, and the general public with reliable and valid information about education practices that support learning and improve academic achievement and access to education opportunities for all students. In carrying out its mission, the Institute provides support for programs of research in areas of demonstrated national need.

Competitions in This Notice

The Institute will conduct five research competitions in FY 2007 through three of its National Education Centers.

The National Center for Education Research (NCER) will hold two competitions. Under the first competition, NCER will consider only applications that address one of the following education research or research training topics:

- Reading and Writing.
- Mathematics and Science Education.
- Teacher Quality—Reading and Writing.
- Teacher Quality—Mathematics and Science Education.
- Education Leadership.
- Education Policy, Finance, and Systems.
- Postdoctoral Research Training.

Under the second competition, NCER will consider only applications that address one of the following education research topics:

- Reading and Writing.
- Interventions for Struggling Adolescent and Adult Readers.
- Mathematics and Science Education.
- Teacher Quality—Reading and Writing.
- Teacher Quality—Mathematics and Science Education.
- Cognition and Student Learning.
- High School Reform.
- Postsecondary Education.

The National Center for Special Education Research (NCSER) will also hold two competitions. Under the first competition, NCSER will consider only applications that address one of the following special education research topics:

- Early Intervention, Early Childhood Special Education, and Assessment for Young Children with Disabilities.
- Mathematics and Science Education.
- Reading, Writing, and Language Development.
- Serious Behavior Disorders.
- Assessment for Accountability.

Under the second competition, NCSER will consider only applications that address one of the following special education research topics:

- Response to Intervention.
- Autism Spectrum Disorders.
- Teacher Quality and Quality of Other Service Providers for Students with Disabilities.
- Secondary and Transition Services.
- Individualized Education Programs and Individualized Family Service Plans.

The National Center for Education Statistics (NCES) will conduct one competition. Under this competition, NCES will consider only applications that address the following topic:

- Secondary Analysis of Data from the National Assessment of Educational Progress.

Eligible Applicants

Applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. Eligible applicants include, but are not limited to, non-profit and for-profit organizations and public and private agencies and institutions, such as colleges and universities.

Request for Applications and Other Information

Information regarding program and application requirements for the competitions is contained in the NCER, NCSER, and NCES Request for Applications packages (RFA), which will be available at the following Web site: *http://www.ed.gov/about/offices/list/ies/programs.html* no later than April 7, 2006. Interested potential applicants should periodically check the Institute's Web site.

Information regarding selection criteria and review procedures will be provided in the RFA package. Information regarding the new Government-wide SF–424 application form for research and research-related activities, which will be used for these competitions, will also be available at the above Web site.

Fiscal Information

Although Congress has not enacted a final appropriation for FY 2007, the Institute is inviting applications for these competitions now so that it may be prepared to make awards following final action on the Department's appropriations bill. The President's FY 2007 Budget for the Institute includes sufficient funding for all of the competitions included in this notice. The actual award of grants will depend on the availability of funds. The number of awards made under each competition will depend upon the quality of the applications received for that competition. The size of the awards will depend upon the scope of the projects proposed.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 77, 80, 81, 82, 84, 85, 86 (part 86 applies only to institutions of higher education), 97, 98, and 99. In addition 34 CFR part 75 is applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217, 75.219, 75.220, 75.221, 75.222, and 75.230.

Performance Measures

To evaluate the overall success of its education research program, the Institute annually assesses the quality and relevance of newly funded research projects, as well as the quality of research publications that result from its funded research projects. Two indicators address the quality of new projects. First, external panels of qualified scientists review the quality of new research applications, and the percentage of newly funded projects that receive an average panel score of excellent or higher is determined. Second, because much of the Institute's work focuses on questions of effectiveness, newly funded applications are evaluated to identify those that address causal questions and then to determine what percentage of those projects use randomized field trials to answer the causal questions. To evaluate the relevance of newly funded research projects, a panel of experienced education practitioners and

administrators reviews descriptions of a randomly selected sample of newly funded projects and rates the degree to which the projects are relevant to educational practice.

Two indicators address the quality of new research publications, both print and web-based, which are the products of funded research projects. First, an external panel of eminent scientists reviews the quality of a randomly selected sample of new publications, and the percentage of new publications that are deemed to be of high quality is determined. Second, publications that address causal questions are identified and are then reviewed to determine the percentage that employ randomized experimental designs. As funded research projects are completed, the Institute will subject the final reports to similar reviews.

To evaluate impact, the Institute surveys kindergarten through college level policymakers and administrators once every three years to determine the percentage who report routinely considering evidence of effectiveness before adopting educational products and approaches.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these laws. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications for the FY 2007 competitions be submitted electronically to the following Web site: *https://ies.constellagroup.com*. Information on the software to be used in submitting applications will be available at the same Web site.

FOR FURTHER INFORMATION CONTACT: The contact person associated with a particular research competition is listed in the chart at the end of this notice and in the RFA. The date on which applications will be available, the deadline for transmittal of applications, the estimated range of awards, and the project period are also listed in the chart and in the RFA that will be posted at: *http://www.ed.gov/about/offices/list/ies/programs.html*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. Individuals with disabilities may obtain a copy of the RFA in an alternative format by contacting that person.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Program Authority: 20 U.S.C. 9501 *et seq.*

BILLING CODE 4000–01–P

INSTITUTE OF EDUCATION SCIENCES

FY 2006 Grant Competitions to Support Education Research

CFDA NUMBER AND NAME	APPLICATIONS AVAILABLE	DEADLINE FOR TRANSMITTAL OF APPLICATIONS	ESTIMATED RANGE OF AWARDS*	PROJECT PERIOD	FOR FURTHER INFORMATION CONTACT
National Center for Education Research (NCER)					
84.305A Education Research ▪ Reading and Writing ▪ Mathematics and Science Education ▪ Teacher Quality—Reading and Writing ▪ Teacher Quality—Mathematics and Science Education ▪ Education Leadership ▪ Education Policy, Finance, and Systems ▪ Postdoctoral Research Training	April 7, 2006	July 27, 2006	$100,000 to $1,200,000	Up to 5 years	David Sweet David.Sweet@ed.gov
84.305B Education Research ▪ Reading and Writing ▪ Interventions for Struggling Adolescent and Adult Readers ▪ Mathematics and Science Education ▪ Teacher Quality—Reading and Writing ▪ Teacher Quality—Mathematics and Science Education ▪ Cognition and Student Learning ▪ High School Reform ▪ Postsecondary Education	April 7, 2006	November 16, 2006	$100,000 to $1,200,000	Up to 5 years	David Sweet David.Sweet@ed.gov
National Center for Special Education Research (NCSER)					
84.324A Special Education Research ▪ Early Intervention, Early Childhood Special Education, and Assessment for Young Children with Disabilities ▪ Mathematics and Science Education ▪ Reading, Writing, and Language Development ▪ Serious Behavior Disorders ▪ Assessment for Accountability	April 7, 2006	July 27, 2006	$100,000 to $1,200,000	Up to 5 years	Kristen Lauer Kristen.Lauer@ed.gov
84.324B Special Education Research ▪ Response to Intervention ▪ Autism Spectrum Disorders ▪ Teacher Quality and Quality of Other Service Providers for Students with Disabilities ▪ Secondary and Transition Services ▪ Individualized Education Programs and Individualized Family Service Plans	April 7, 2006	November 16, 2006	$100,000 to $1,200,000	Up to 5 years	Kristen Lauer Kristen.Lauer@ed.gov
National Center for Education Statistics (NCES)					
84.902B Secondary Analysis of Data from the NAEP	April 7, 2006	July 27, 2006	$65,000 to $100,000	Up to 18 months	Alexandra Sedlacek Alex.Sedlacek@ed.gov

*These estimates are annual amounts.

Note: The Department is not bound by any estimates in this notice.

Dated: March 17, 2006.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 06–2781 Filed 3–21–06; 8:45 am]

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Federal Register

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Reference questions. Send questions and comments about the Federal Register system to: **fedreg.infonara.gov**

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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.

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Pesticide, food, and feed additive petitions:

Bayer CropScience; published 3-22-06

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.J. Res. 47/P.L. 109–182

Increasing the statutory limit on the public debt. (Mar. 20, 2006; 120 Stat. 289)

S. 1578/P.L. 109–183

Upper Colorado and San Juan River Basin Endangered Fish Recovery Programs Reauthorization Act of 2005 (Mar. 20, 2006; 120 Stat. 290)

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